Supreme Court, U.S.
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No. 15-474

IN THE

Supreme Court of the United States

ROBERT F MCDONNELL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit

SUPPLEMENTAL JOINT APPENDIX

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PETITION FOR CERTIORARI FILED OCTOBER 13, 2015
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General Docket
United States Court of Appeals for the Fourth Circuit

Court of Appeals Docket #: 15-4019 **Docketed:** 01/13/2015
US v. Robert McDonnell **Termed:** 07/10/2015
Appeal From: United States District Court for the Eastern District of Virginia at Richmond
Fee Status: fee paid

Case Type Information:
1) Criminal
2) Direct Criminal
3) null

Originating Court Information:
District: 0422-3 : 3:14-cr-00012-JRS-1
Court Reporter: Richard Banke, Court Reporter Coordinator
Court Reporter: Jeffrey B. Kull, Official Court Reporter
Presiding Judge: James R. Spencer, Senior U. S. District Court Judge
Date Filed: 01/21/2014

Date Order/ Judgment:	Date Order/ Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
01/06/2015	01/13/2015	01/13/2015	01/13/2015
01/13/2015	01/13/2015		

01/13/2015	1	Criminal case docketed. Originating case number: 3:14-cr-00012-JRS-1. Date notice of appeal filed: 01/13/2015. Case manager: CPoulsen. [15-4019] (CP)
01/14/2015	2	MOTION by Appellant Robert F McDonnell for bail or release pending appeal (Local Rule 9(a) and (b)). Date and method of service: 01/14/2015 ecf. [999510843] [15-4019] Noel Francisco
		* * *
01/26/2015	39	COURT ORDER filed [999517220] granting Motion for bail/release pending appeal (Local Rule 9(a) and (b)) [2] Copies to all parties. [15-4019] (CP)
		* * *
03/02/2015	55	BRIEF by Appellant Robert F McDonnell in electronic and paper format. Type of Brief: OPENING. Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 03/03/2015. [999538431] [15-4019] Noel Francisco
		* * *

03/26/2015	105	BRIEF by Appellee US in electronic and paper format. Type of Brief: RESPONSE. Method of Filing Paper Copies: hand delivery. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 03/27/2015. [99955 4040] [15-4019] Richard Cooke
		* * *
04/08/2015	117	BRIEF by Appellant Robert F McDonnell in electronic and paper format. Type of Brief: REPLY Method of Filing Paper Copies: mail. Date Paper Copies Mailed, Dispatched, or Delivered to Court: 04/09/2015. [999561728] [15-4019] Noel Francisco
		* * *
05/12/2015	121	ORAL ARGUMENT heard before the Honorable Diana Gribbon Motz, Robert B. King and Stephanie D. Thacker. Attorneys arguing case: Noel J. Francisco for Appellant Robert F McDonnell and Richard Daniel Cooke for Appellee US. Courtroom Deputy: Cathy Poulsen. [999581734]

		[15-4019] (BW)
		* * *
07/10/2015	126	PUBLISHED AUTHORED OPINION filed. Originating case number: 3:14-cr-00012-JRS-1. [999618374]. [15-4019] (CP)
07/10/2015	127	JUDGMENT ORDER filed. Disposition method: 15-4019 opn.p.arg. Decision: Affirmed. Originating case number: 3:14-cr-00012-JRS-1. Entered on Docket Date: 07/10/2015. [999618385] Copies to all parties and the district court/agency.. [15-4019] (CP)
07/10/2015	128	Copy of judgment and certiorari status form transmitted to defendant and counsel. [127] Judgment Order , [126] Published Authored Opinion. Copy mailed to defendant?No. Address of Defendant: Current address unavailable to court. Counsel to locate defendant and serve with judgment. [15-4019] (LM)

07/24/2015	129	PETITION for rehearing and rehearing en banc by Appellant Robert F. McDonnell. [15-4019] Noel Francisco
		* * *
08/11/2015	131	COURT ORDER filed [999637897] denying Motion for rehearing and rehearing en banc [129] Copies to all parties. [15-4019] (DL)
08/13/2015	132	MOTION by Appellant Robert F McDonnell to stay mandate [FRAP 41(d)]. Date and method of service: 08/13/2015 ecf. [999639661] [15-4019] Noel Francisco
		* * *
08/20/2015	139	COURT ORDER filed [999644212] denying Motion to stay mandate [FRAP 41(d)] [132] Copies to all parties.. [15-4019] (DL)
		* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA	)	**No.3:14cr12**
v.	)	
ROBERT F. MCDONNELL (Counts 1-13)	)	**Count 1: 18 U.S.C. § 1349 (Conspiracy to Commit Honest-Services Wire Fraud)**
and	)	
MAUREEN G. MCDONNELL (Counts 1-11,13-14)	)	**Counts 2-4: 18 U.S.C. § 1343 (Honest-Services Wire Fraud)**
Defendants.	)	
	)	**Count 5: 18 U.S.C. § 1951 (Conspiracy to Obtain Property under Color of Official Right)**
	)	
	)	**Counts 6-11: 18 U.S.C. § 1951 (Obtaining Property under Color of Official Right)**
	)	
	)	**Counts 12-13: 18 U.S.C. § 1014 (False Statements)**
	)	
	)	**Count 14: 18 U.S.C. § 1512(c)(2) (Obstruction of Official Proceeding)**
	)	
	)	**Forfeiture Notice**

January 2014 Term – at Richmond, Virginia

INDICTMENT

THE GRAND JURY CHARGES THAT:

At all times relevant to this Indictment, unless otherwise stated:

GENERAL ALLEGATIONS

A. *The Defendants*

1. Defendant ROBERT F. MCDONNELL was the Governor of the Commonwealth of Virginia. He previously served as a member of the Virginia House of Delegates and as the Attorney General of Virginia. ROBERT MCDONNELL was sworn in as the 71st Governor of Virginia in January 2010.

2. Defendant MAUREEN G. MCDONNELL was the wife of ROBERT MCDONNELL and served as the First Lady of Virginia.

B. *Relevant Individuals and Entities*

3. MoBo Real Estate Partners, LLC ("MoBo") was a Virginia limited liability company engaged in the business of owning and renting vacation homes in Virginia Beach, Virginia. ROBERT MCDONNELL was one of two members of, and had a 50% personal financial interest in, MoBo.

4. Star Scientific, Inc. ("Star Scientific") was a Delaware corporation with its principal executive offices located in Glen Allen, Virginia. Star Scientific was a publicly traded company on the NASDAQ Global Market under the ticker symbol "STSI." Star Scientific was involved in and its activities affected interstate commerce.

5. JW was the Chief Executive Officer of Star Scientific.

C. *The Governor and the Governor's Office*

6. The Governor and the Office of the Governor of the Commonwealth of Virginia ("OGV") performed a wide range of official actions. Those actions included, among other things, appointing directors and key administrators of state departments, agencies, and boards; authorizing expenditures of certain grant funds; proposing a budget and overseeing the expenditure of state funds; conducting meetings and hosting events for the purposes of fostering Virginia business and economic development; directing other government officials to conduct such meetings and events; speaking at events in and outside Virginia about Virginia businesses and economic development; coordinating with state boards, commissions, and institutions, including universities, about uses of stale labor and funding resources; and otherwise setting priorities and direction for the Commonwealth of Virginia.

7. Throughout his campaign for Governor, ROBERT MCDONNELL made it clear that one of his highest priorities as Governor would be acting to promote the matter and cause of economic development for businesses and industries in Virginia, *e.g.*, his campaign slogan was "Bob's for Jobs." Throughout his tenure as Governor, ROBERT MCDONNELL customarily performed official actions to promote the matter and cause of economic development of Virginia businesses and industries, and he touted his efforts and activities in support of the same.

D. *Background of Star Scientific's Dietary Supplement Products*

8. Star Scientific described itself as a "technology-oriented company with a mission to promote maintenance of a healthy metabolism and lifestyle." Beginning in or about 2007, the company focused on utilizing certain alkaloids in the tobacco plant, namely anatabine, to address issues related to the desire to smoke. Star Scientific subsequently began evaluating anatabine's potential for treating chronic inflammation that the company believed might be associated with disorders such as thyroiditis, diabetes, arthritis, Alzheimer's disease, and multiple sclerosis.

9. Star Scientific, through a wholly owned subsidiary, engaged in the development, manufacture, marketing, and sale of two anatabine-based dietary supplements: CigRx®, a tobacco alternative; and Anatabloc®, for anti-inflammatory support.

10. The types of claims that Star Scientific could make under applicable federal law regarding its dietary supplements CigRx® and Anatabloc® differed substantially from those allowed for drug manufacturers. While drug manufacturers could claim that their products would diagnose, cure, mitigate, treat, or prevent a disease, dietary supplement manufacturers such as Star Scientific were legally prohibited from making such claims. These legal limitations made it more challenging for Star Scientific to gain widespread consumer acceptance of the potential health benefits for its dietary supplement products.

11. To overcome the difficulties in gaining consumer acceptance for its products, Star Scientific sought to legitimize the potential health benefits of its dietary supplements by encouraging scientific studies of anatabine, which was an active ingredient in CigRx® and Anatabloc®. Star Scientific would then present the results of those studies to physicians in the hope that the physicians would recommend Star Scientific's dietary supplements to their patients.

12. Another of Star Scientific's goals was to have scientific studies of human use of anatabine, including in clinical trials, that would allow the company to develop drugs for the treatment of diseases such as thyroiditis, diabetes, arthritis, Alzheimer's disease, and multiple sclerosis.

E. *Background of the Defendants' Relationship with JW*

13. In or about March 2009, as a result of requests from ROBERT MCDONNELL's staff to JW, ROBERT MCDONNELL began using a jet aircraft owned by JW during his campaign for Governor of Virginia. Prior to this time, ROBERT MCDONNELL and JW had never met, and they had no personal or professional relationship.

14. On or about November 3, 2009, ROBERT MCDONNELL was elected Governor of Virginia. While ROBERT MCDONNELL and JW had met briefly during the campaign as a result of ROBERT MCDONNELL's use of JW's aircraft, they had no personal relationship and were merely professional acquaintances at the time that ROBERT MCDONNELL became Governor-Elect.

15. In or about December 2009, ROBERT MCDONNELL attended a political event at the Four Seasons Hotel in New York City. As a result of a request by JW to one of ROBERT MCDONNELL's staff, JW met with ROBERT MCDONNELL and MAUREEN MCDONNELL at the Four Seasons Hotel. During the meeting, MAUREEN MCDONNELL asked for assistance in finding a designer dress for her husband's upcoming inauguration as Governor, and JW agreed to help. MAUREEN MCDONNELL subsequently informed JE, one of ROBERT MCDONNELL's senior staff members, that JW had agreed to purchase a designer dress by Oscar de la Renta for MAUREEN MCDONNELL for the inauguration. JE expressed concerns regarding the prospect of JW purchasing MAUREEN MCDONNELL's inaugural dress and ultimately informed her that JW's purchase of a designer dress for the inauguration would be inappropriate and should not be done. As a result, MAUREEN MCDONNELL became upset with JE.

16. On or about December 21, 2009, MAUREEN MCDONNELL sent an email to JE, stating:

> I need to talk to you about Inaugural clothing budget. I need answers and Bob is screaming about the thousands I'm charging up in credit card debt. We are broke, have an unconscionable amount in credit card debt already, and this Inaugural is killing us!! I need answers and I need help, and I need to get this done.

MAUREEN MCDONNELL subsequently told JW that she could not accept the dress at that time but that she would take a "rain check" from him.

17 On or about October 3, 2010, JW agreed to let ROBERT MCDONNELL use JW's aircraft to fly from Richmond, Virginia, to Sacramento, California, for a political event. JW met ROBERT MCDONNELL in Sacramento, California, and accompanied him on the return flights to Richmond. JW used the trip as an opportunity to discuss Star Scientific's products directly with ROBERT MCDONNELL. During the return flights, JW informed ROBERT MCDONNELL of the significant potential health benefits of anatabine and the need for scientific studies of these potential health benefits. JW told ROBERT MCDONNELL that Star Scientific needed the assistance of the Virginia government, and ROBERT MCDONNELL told JW that he would put JW in contact with the Virginia Secretary of Health and Human Resources (the "Virginia Secretary of Health").

18. On or about October 12, 2010, an OGV staff member emailed the Virginia Secretary of Health and attached a copy of a press release that had been forwarded by JW's assistant. The press release announced the beginning of clinical trials of anatabine (also referred to as "RCP-006," a compound whose active ingredient is anatabine) for the treatment of Alzheimer's disease. In the email, the OGV staff member stated, "[T]he Governor would like you to review the attached. I am sending the original note up to you today."

19. On or about November 4, 2010, JW met with the Virginia Secretary of Health to discuss Star Scientific's products. The meeting had been previously arranged by an OGV staff member. During the meeting, JW discussed the potential health benefits of Star Scientific's products. The Virginia Secretary of Health was skeptical regarding JW's claims because Star Scientific's products had not been scientifically proven to be effective. JW requested that the Virginia Secretary of Health visit the Roskamp Institute, a Florida-based research group that had financial ties to Star Scientific and had begun scientific studies of anatabine. The Virginia Secretary of Health ultimately rejected JW's invitation to visit the Roskamp Institute.

20. On or about February 3, 2011, Star Scientific invited doctors and health professionals to a seminar dinner at the Jefferson Hotel in Richmond, Virginia, for its CigRx® product. The dinner was part of Star Scientific's marketing strategy of gaining consumer acceptance by convincing doctors and health professionals to recommend CigRx® to their patients. On the day of the dinner, JW contacted one of the OGV staff members and requested that ROBERT MCDONNELL come to the CigRx® event and address the attendees. That evening, both ROBERT MCDONNELL and MAUREEN MCDONNELL came to the event at the Jefferson Hotel. ROBERT MCDONNELL made brief remarks in support of Star Scientific to the doctors and health professionals in attendance. Star Scientific subsequently received the OGV's approval to put pictures of ROBERT MCDONNELL speaking at the CigRx® event on the company's Facebook and Twitter social media sites.

21. As of in or about 2009 and continuing through 2012, MoBo's two Virginia Beach properties required capital infusions of up to $60,000 annually to meet mortgage payments and other expenses. MoBo relied on loans, including those from family and friends, to make up the difference. MoBo explored the possibility of selling the two properties without success as their values were declining. MoBo also began to explore refinancing the heavily leveraged properties.

F. ***The Scheme***

22. As set forth in greater detail below, from in or about April 2011 through in or about March 2013, the defendants participated in a scheme to use ROBERT MCDONNELL's official position as the Governor of Virginia to enrich the defendants and their family members by soliciting and obtaining payments, loans, gifts, and other things of value from JW and Star Scientific in exchange for ROBERT MCDONNELL and the OGV performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products, including Anatabloc®. And as also detailed below, the defendants took steps throughout that time to conceal the scheme.

23. On or about April 11, 2011, MAUREEN MCDONNELL contacted JW and requested that he take her shopping in New York City for the designer dress by Oscar de la Renta. MAUREEN MCDONNELL explained that she and ROBERT MCDONNELL were attending a political event at the Union League Club in New York City on April 13, 2011, and that she would ensure that JW was seated

next to ROBERT MCDONNELL at the event. JW agreed to pay for the shopping trip.

24. On or about April 13, 2011, JW accompanied MAUREEN MCDONNELL to several luxury stores in New York City, including Oscar de la Renta, Louis Vuitton, and Bergdorf Goodman. MAUREEN MCDONNELL informed JW that she needed dresses and accessories for her daughter's upcoming wedding and for her and ROBERT MCDONNELL's upcoming anniversary party. JW paid for the entire luxury shopping trip for MAUREEN MCDONNELL and spent approximately $10,999 at Oscar de la Renta, approximately $5,685 at Louis Vuitton, and approximately $2,604 at Bergdorf Goodman. As promised by MAUREEN MCDONNELL, JW was seated next to ROBERT MCDONNELL at the Union League Club event later that evening.

25. On or about April 29, 2011, JW and his wife attended a private dinner at the Governor's Mansion with ROBERT MCDONNELL and MAUREEN MCDONNELL. During the dinner, JW and his wife discussed Star Scientific's products with the defendants. During the dinner, JW and his wife met CM, one of the defendants' daughters. JW and his wife had not previously met CM, who they learned was getting married in June 2011.

26. On or about May 2, 2011, JW had a private meeting with MAUREEN MCDONNELL at the Governor's Mansion. During the meeting, MAUREEN MCDONNELL informed JW that she and ROBERT MCDONNELL were having severe financial difficulties. MAUREEN MCDONNELL asked JW for a $50,000 loan. MAUREEN

MCDONNELL also told JW that she could help Star Scientific but that she needed JW's financial assistance.

27 MAUREEN MCDONNELL also informed JW that she and ROBERT MCDONNELL did not know how they were going to pay for their daughter's upcoming wedding expenses, and she asked for JW's assistance. JW asked how much money was needed, and MAUREEN MCDONNELL responded that $15,000 was needed to pay the remaining catering costs.

28. Before agreeing to provide the requested financial assistance to the defendants, JW spoke directly with ROBERT MCDONNELL about the $50,000 loan. In that conversation, ROBERT MCDONNELL explained the defendants' financial difficulties. ROBERT MCDONNELL informed JW that the rental income from the defendants' rental properties in Virginia Beach was not covering the bills from those properties. JW agreed to provide the $50,000 loan with a two-year term at 5% interest. JW also informed ROBERT MCDONNELL that loan paperwork was not necessary.

29. On or about May 9, 2011, an OGV staff member sent an email to the Virginia Secretary of Health stating:

> The Governor said that he sent you some material on the RosKamp Institute (http://www.rfdn.org/) and that you were going to get back to him regarding your thoughts on the organization. Have you had a chance to look at that yet? If so, could you let me know your thoughts? We are currently evaluating having

> the Governor go down to Florida to speak to this group and wanted to get your feedback prior to moving forward on this.

The Virginia Secretary of Health sent a response email stating "[h]e mentioned this to me on Thursday so I have not gotten to it yet. How soon do you need to make a decision?" The OGV staff member responded via email that "[t]he person inviting the Governor is a good friend so I would like to be as responsive as possible."

30. On or about May 9, 2011, an OGV staff member sent an email to JW's assistant stating:

> I spoke with the Governor regarding flying down to speak to the RosKamp institute on June 1st. Unfortunately, after checking with his daughter (she is getting married that Saturday) he doesn't believe he will be able to attend due to some Dad commitments that day. I'm so sorry this won't work out! What else can we do to fix this?

31. On or about May 17, 2011, MAUREEN MCDONNELL entered a calendar event on her electronic calendar for her attendance at the June 1, 2011, Star Scientific event at the Roskamp Institute in Florida.

32. On or about May 23, 2011, JW instructed his assistant to write two checks: (a) a $50,000 check (No. 1001) made payable to MAUREEN MCDONNELL; and (b) a $15,000 check (No. 1002) made payable in blank with a memo annotation of "wedding gift." On or about May 23, 2011, JW also visited MAUREEN MCDONNELL at the Governor's Mansion and gave her the two checks.

33. On or about May 25, 2011, MAUREEN MCDONNELL deposited the $50,000 check (No. 1001) into her personal bank account (No. xxxx4417) at Wells Fargo Bank (d/b/a Wachovia Bank). Prior to that deposit, MAUREEN MCDONNELL's personal bank account had an available balance of approximately $4,798.

34. Between on or about May 25, 2011, and on or about May 31, 2011, MAUREEN MCDONNELL made the following payments from her Wells Fargo Bank (d/b/a Wachovia Bank) account (No. xxxx4417): (a) a $10,638.83 payment to Pentagon Federal Credit Union ("PenFed") for a credit card held solely in the name of ROBERT MCDONNELL; (b) a $9,900 payment to Bank of America for a credit card held jointly in both defendants' names; and (c) a $1,500 payment to MoBo.

35. On or about May 26, 2011, the catering company for CM's wedding cashed the $15,000 check referenced above (No. 1002). On or about December 29, 2010, ROBERT MCDONNELL had signed the contract with the catering company for CM's wedding and had made two payments totaling $7,948.50 in December 2010 and January 2011 as deposits on that contract. On or about June 13, 2011, after CM's wedding, the catering company refunded $5,266.50 via check to MAUREEN MCDONNELL. MAUREEN MCDONNELL caused the refund check to be deposited into her Wells Fargo Bank (d/b/a Wachovia Bank) account (No. xxxx4417) on or about June 21, 2011.

36. On or about May 28, 2011, ROBERT MCDONNELL sent an email to JW stating "Thanks

so much for all your help with my family. Your very generous gift to [CM] was most appreciated as well as the golf round tomorrow for the boys. Maureen is excited about the trip to fla to learn more about the products and to see [JW's wife]. Have a restful weekend with your family. Thanks."

37 On or about May 29, 2011, ROBERT MCDONNELL, his two sons, and his future son-in-law played golf at Kinloch Golf Club ("Kinloch"), an exclusive private golf course in Manakin-Sabot, Virginia. JW was a member at Kinloch and had agreed to pay for ROBERT MCDONNELL and his family's golf outing there even though JW would not be playing with them. During the round of golf, ROBERT MCDONNELL and his family charged approximately $2,380 to JW's Kinloch member account, including approximately $1,200 in greens fees, $500 in caddie fees, $410 in merchandise at the pro shop, and $270 in food and beverages.

38. On or about June 1, 2011, MAUREEN MCDONNELL opened a brokerage account at Brokerage Firm A.

39. On or about June 1, 2011, MAUREEN MCDONNELL purchased 6,000 shares of Star Scientific stock in her newly opened Brokerage Firm A account. To pay for the purchase, MAUREEN MCDONNELL wrote a check from her Wells Fargo Bank (d/b/a Wachovia Bank) account (No. xxxx4417) for approximately $31,079.

40. On or about June 1, 2011, MAUREEN MCDONNELL and her Chief of Staff, a Virginia government employee, traveled on JW's private aircraft to Star Scientific's event at the Roskamp

Institute in Sarasota, Florida. MAUREEN MCDONNELL spoke at the event, which was heavily attended by Star Scientific's investors, and announced that she was offering the Governor's Mansion for the location of Star Scientific's official product launch of Anatabloc®.

41. On or about June 16, 2011, JW's assistant emailed an attached letter dated that same day to MAUREEN MCDONNELL's Chief of Staff. The letter was from JW, addressed to ROBERT MCDONNELL, and stated, in part:

> The particular intent of this letter is to provide the Commonwealth of Virginia with a technology platform to lower healthcare costs.
>
> I am suggesting that you use the attached protocol to initiate the 'Virginia Study' of Anatabloc at the Medical College of Virginia and the University of Virginia School of Medicine, with an emphasis on endocrinology, cardiology, osteoarthritis and gastroenterology.
>
> This landmark study will provide the data for an evaluation of the economic impact of Anatabloc in healthcare, and if we are right then I believe that the results of the Virginia study will have a major impact on reducing healthcare costs for Virginia.

MAUREEN MCDONNELL's Chief of Staff subsequently forwarded the letter by email to MAUREEN MCDONNELL.

42. In or about early July 2011, Star Scientific began exploring possible funding sources for scientific

studies at Virginia research universities of Anatabloc's potential health benefits. In particular, Star Scientific was interested in obtaining grant funding from the Virginia Tobacco Indemnification and Community Revitalization Commission ("Tobacco Commission"), which provides grants for the promotion of economic growth and development in tobacco-dependent communities using proceeds of the national tobacco settlement. It was important to Star Scientific that these studies not be funded by the company for two primary reasons: (a) the studies would be very expensive and would strain Star Scientific's finances, and (b) having third-party funding would enhance the perceived legitimacy of the results of the studies in the scientific community.

43. The Tobacco Commission would not provide grants to for-profit entities. Therefore, Star Scientific developed a plan to encourage Virginia state research universities (*e.g.*, the University of Virginia ("UVa") and Virginia Commonwealth University ("VCU," formerly Medical College of Virginia ("MCV"))) to apply to the Tobacco Commission for grants to perform scientific research of anatabine, the main active ingredient in the company's products.

44. In or about early July 2011, to effectuate its plan, Star Scientific began reaching out to scientific researchers at Virginia state universities. In addition to informing these researchers about the preliminary scientific results that indicated that anatabine might have health benefits for the treatment of various medical conditions, Star Scientific informed the Virginia state researchers that ROBERT MCDONNELL and MAUREEN MCDONNELL supported the research of the

company's products and that the Tobacco Commission was a potential source of grant funding for the research.

45. On or about July 23, 2011, Star Scientific held a symposium at Gibson Island, Maryland, to discuss potential scientific studies of anatabine. The company invited researchers from UVa and VCU to attend the symposium to learn more about these studies and potential research funding from the Tobacco Commission. In addition, MAUREEN MCDONNELL's Chief of Staff was invited to attend. The state researchers and MAUREEN MCDONNELL's Chief of Staff traveled together to and from the all-day symposium on JW's private aircraft.

46. From on or about July 28, 2011, through on or about July 31, 2011, ROBERT MCDONNELL, MAUREEN MCDONNELL, and their family members enjoyed a private vacation at JW's multimillion-dollar vacation home on Smith Mountain Lake in Virginia. MAUREEN MCDONNELL had previously called JW to ask whether JW's Ferrari would be at the house for ROBERT MCDONNELL's use. JW arranged to have a Star Scientific employee transport the Ferrari from Richmond to his Smith Mountain Lake house so that the defendants could use the Ferrari during their vacation. In addition, JW rented a boat specifically for the defendants' use during the vacation.

47 On or about July 31, 2011, at approximately 7:47 p.m., MAUREEN MCDONNELL sent an email to JW that contained no text but had an attached

picture of ROBERT MCDONNELL driving JW's Ferrari.

48. On or about July 31, 2011, at approximately 11:29 p.m., ROBERT MCDONNELL sent an email to the Virginia Secretary of Health stating that ROBERT MCDONNELL "would like to have [one of the Secretary of Health's Deputies] attend a short briefing at the mansion about 10am with first lady on the Star Scientific anatablock [sic] trials planned in va at vcu and uva."

49. On or about August 1, 2011, as a result of ROBERT MCDONNELL's email to the Virginia Secretary of Health the night before, MAUREEN MCDONNELL, JW, and a senior policy advisor to the Virginia Secretary of Health met at the Governor's Mansion. JW informed the policy advisor that research scientists at UVa and MCV were interested in doing clinical trials of the potential health benefits of Anatabloc® for autoimmune diseases. JW explained that the research scientists at the Virginia universities would get small planning grants to develop test protocols so that large grant proposals could be submitted to the Tobacco Commission. In MAUREEN MCDONNELL's presence, JW told the policy advisor that he anticipated Tobacco Commission funding for these studies and that he had discussed this with ROBERT MCDONNELL. In addition, JW discussed the idea of having Virginia government employees use Anatabloc® as a control group for research studies.

50. On or about August 1, 2011, MAUREEN MCDONNELL also met privately with JW During the meeting, MAUREEN MCDONNELL noticed JW's

watch and asked what brand it was. JW informed her that it was a Rolex. She informed JW that she would like to get one for ROBERT MCDONNELL because he would like a Rolex. JW expressed concern regarding whether ROBERT MCDONNELL would actually wear such a luxury watch given his role as a senior government official. MAUREEN MCDONNELL told JW that she wanted JW to buy a Rolex for ROBERT MCDONNELL. JW subsequently bought a Rolex for ROBERT MCDONNELL. When JW contacted MAUREEN MCDONNELL to ask her what she wanted engraved on the watch, MAUREEN MCDONNELL instructed JW to have "71st Governor of Virginia" engraved on the back of the Rolex.

51. On or about August 1, 2011, MAUREEN MCDONNELL entered a calendar event on her electronic calendar for her attendance on August 30, 2011, for a "Lunch w/ VA researchers."

52. On or about August 1, 2011, the senior policy advisor from the Virginia Secretary of Health's office who had met with JW and MAUREEN MCDONNELL earlier that day sent an email to JW In the email, the policy advisor stated that "it is necessary for us to make policy recommendations and decisions off of sound data" and that she was "grateful that [JW was] making strides to validate the incredible anecdotes and stories that result from your work." The policy advisor concluded the email by stating that she would "continue to work alongside of the First Lady as we identify how best to move forward."

53. On or about August 2, 2011, MAUREEN MCDONNELL ordered Brokerage Firm A to

purchase an additional 522 shares of Star Scientific stock for her account.

54. On or about August 4, 2011, MAUREEN MCDONNELL sent an email to ROBERT MCDONNELL, forwarding a quote from a stock market analyst who covered Star Scientific's stock. In the forwarded quote, the stock market analyst stated that "[a]s an economist, however, I am utterly certain that Anatabloc is going to shake our political system to its very roots. This is because even tiny changes to the actuarial tables will have enormous budgetary impacts." MAUREEN MCDONNELL annotated the importance of the email as "high."

55. On or about August 5, 2011, MAUREEN MCDONNELL sent an email to the above-referenced stock market analyst. In her email – which was in response to the analyst forwarding a favorable article about Star Scientific's Anatabloc® – MAUREEN MCDONNELL asked, "Would it be possible for you to send this as an attachment like you did in the first email so I would be able to print out a clean copy for my husband?"

56. On or about August 5, 2011, one of the defendants' sons and his friend played golf at Kinloch. Even though JW was not playing with them, they played as JW's guests and charged approximately $618 to JW's Kinloch member account, including approximately $300 in greens fees, $100 in caddie fees, and $214 in merchandise at the pro shop.

57 On or about August 11, 2011, the defendants' two sons and a friend played golf at Kinloch. Even though JW was not playing with them, they played as JW's guests and charged approximately $1,309 to

JW's Kinloch member account, including approximately $900 in greens fees, $300 in caddie fees, and $109 in food and beverages.

58. On or about August 12, 2011, MAUREEN MCDONNELL's Chief of Staff asked an OGV staff member to put a lunch that MAUREEN MCDONNELL was hosting for a number of researchers and doctors on August 30, 2011, on ROBERT MCDONNELL's schedule for that day.

59. On or about August 13, 2011, ROBERT MCDONNELL and one of his sons played golf at Kinloch. Even though JW was not playing with them, they played as JW's guests and charged approximately $869 to JW's Kinloch member account, including approximately $600 in greens fees, $200 in caddie fees, $53 in merchandise at the pro shop, and $16 in food and beverages.

60. On or about August 30, 2011, the defendants hosted an event for the launch of Star Scientific's Anatabloc® product at the Governor's Mansion. JW had previously coordinated the list of invitees for the event with MAUREEN MCDONNELL and her staff. The invitees included some of the same UVa and VCU research scientists whom Star Scientific was attempting to convince to perform clinical trials of Anatabloc®. Prior to the event, MAUREEN MCDONNELL and JW placed samples of Anatabloc® at each table setting. On the day of the event, Star Scientific issued a press release stating, in pertinent part:

> Star Scientific, Inc. (NASDAQ: CIGX) has announced that the company is pleased to initiate the launch today of Anatabloc™, a

> dietary supplement that is designed to support the immune system in maintaining healthy levels of inflammation.
>
> A group of Richmond area physicians and healthcare providers are gathering at the Virginia Governor's mansion today to learn more about the state of the research of Anatabloc™. The lead researchers who have overseen pre-clinical studies will discuss the results of testing with this group. They will be joined by researchers from the University of Virginia Medical School and the VCU Medical Center who also are interested in studying further potentials for Anatabloc™ [Star Scientific's affiliate] has solicited research proposals from these institutions, and expects to issue planning grants for the preparation of full research proposals.

ROBERT MCDONNELL attended the Star Scientific event at the Governor's Mansion and spoke favorably to the attendees regarding further study of anatabine. During the event, JW presented $25,000 checks to UVa and VCU research scientists as planning grants to encourage UVa and VCU to prepare full research proposals for scientific studies of anatabine.

61. On or about September 9, 2011, a broker at Brokerage Firm A wrote a letter to MAUREEN MCDONNELL outlining a prior conversation between the two. In that conversation, MAUREEN MCDONNELL had requested information from the broker regarding ways to avoid the Star Scientific shares held in her Brokerage Firm A account

remaining in her name. She had informed the broker that she wanted the shares out of her name by the end of the year in order to avoid certain annual reporting requirements. Among the options that MAUREEN MCDONNELL had mentioned were gifting the shares to her children or setting up a blind trust. The broker wrote the September 9, 2011, letter to MAUREEN MCDONNELL because he was uncomfortable with MAUREEN MCDONNELL's request that he assist her in financial transactions designed to avoid annual reporting requirements. In the letter, the broker stated:

> The 6,522 shares you purchased of Star Scientific, Inc. are currently titled in your name alone. My understanding is that you would like to gift a portion of these shares to each of the children, either now or at some point in the future, and possibly end up with zero shares in your name.
>
> I don't have the answer about how to avoid shares remaining in your name, without transferring them to another entity. You had mentioned the use of a blind trust. If you have an attorney draft the trust, we can open and operate this type of account. However, the blind trust is a discretionary account that we would manage, and you essentially would have no direction in the purchase or sale of securities. As such, rather than owning shares of Star Scientific, you most likely would end up with a portfolio of well-known large dividend paying companies and bonds. I think this would defeat

the purpose, at least for your intent of this Star Scientific investment.

62. On or about October 18, 2011, Star Scientific held a dinner at the Westin Hotel in Richmond, Virginia, for local area doctors and health care professionals to learn more about Anatabloc®. MAUREEN MCDONNELL was the featured guest of the dinner and spoke favorably regarding Star Scientific and its products.

63. On or about October 22, 2011, Star Scientific held a dinner at the Warwick Hills Golf & Country Club in Grand Blanc, Michigan, for local area doctors and health care professionals to learn more about Anatabloc®. MAUREEN MCDONNELL was the featured guest of the dinner and spoke favorably regarding Star Scientific and its products. MAUREEN MCDONNELL flew to and from the event on JW's private jet. During the flights, MAUREEN MCDONNELL, JW, and a research scientist who consulted for Star Scientific discussed the potential health benefits of Anatabloc® and the need for clinical studies. The next day, the research scientist sent MAUREEN MCDONNELL an email summarizing the discussions on board JW's aircraft. In the email, the research scientist wrote about the lack of data regarding the number of people who suffer from autoimmune and chronic inflammatory conditions. He stated that "it would be of value to perform a study of Virginia government employees to determine the prevalences [sic] of autoimmune and inflammatory conditions." The research scientist further stated, "Next, to tie in [JW's] anti-inflammatory product, one could add a follow-up data assessment to assess whether the inflammatory

markers screened for at the initial visit have been decreased in employees who have taken anatabine."

64. On or about October 24, 2011, MAUREEN MCDONNELL sent a response email to the research scientist stating "[t]hanks for your email and I printed your [sic] it out and shared it with my husband. He said he'd like to talk to some people to look into it and discern what the best approach for Virginia would be."

65. During the fall of 2011, Star Scientific was trying to effectuate its plans for the studies at UVa and VCU by encouraging those state research universities to make grant funding applications to the Tobacco Commission for the scientific study of anatabine. As part of that effort, on or about November 29, 2011, executives at Star Scientific had a conference call with senior UVa administrators, who were Virginia government employees. The Star Scientific executives requested that UVa take the lead role among the Virginia research universities in making the grant applications to the Tobacco Commission and overseeing the use of any grant funding. The UVa administrators expressed interest but did not agree to Star Scientific's requests during the call.

66. Under Virginia law, certain state officials and employees – including the Governor and members of his staff – are required to annually file a standardized disclosure statement of their personal economic interests on or before January 15 each year. The disclosure statement is commonly referred to as the Statement of Economic Interest ("SOEI"), and it is legally required to be filed and maintained as a

public record for five years. The SOEI requires a state official to: (a) disclose personal liabilities held by the state official or that official's immediate family members of more than $10,000 to any one creditor, and to state the principal business or occupation for each of those creditors; (b) disclose securities held by the state official or that official's immediate family members valued in excess of $10,000 in a company, and to list the name of the company and the type of security; and (c) disclose gifts or entertainment valued in excess of $50 received by the state official from any business or individual (other than a relative or close personal friend), and to list the name of the business or individual and the approximate value of the gift or entertainment. Pursuant to Virginia law, the state official must swear or affirm that the information provided on the SOEI is full, true, and correct to the best of that official's knowledge.

67 On or about December 20, 2011, MAUREEN MCDONNELL sold 6,522 shares of Star Scientific stock held in her Brokerage Firm A account, leaving her with no shares held in her name at year-end. MAUREEN MCDONNELL made it clear to the Brokerage Firm A broker overseeing the account that the sale of the Star Scientific stock had to occur before year-end in order to avoid annual reporting requirements.

68. On or about December 25, 2011, MAUREEN MCDONNELL gave ROBERT MCDONNELL the Rolex watch – inscribed on the back with "71st Governor of Virginia" – that JW had purchased pursuant to MAUREEN MCDONNELL's instructions.

69. On or about January 7, 2012, ROBERT MCDONNELL and his two sons played golf at Kinloch. Even though JW was not playing with them, they played as JW's guests and charged approximately $1,424 to JW's Kinloch member account, including approximately $990 in greens fees, $200 in caddie fees, $53 in merchandise at the pro shop, and $181 in food and beverages.

70. On or about January 15, 2012, ROBERT MCDONNELL filed his SOEI. On the SOEI, ROBERT MCDONNELL stated that neither he nor any member of his immediate family owned securities valued in excess of $10,000 invested in any one business. On the personal liability section of the SOEI, ROBERT MCDONNELL stated that the personal liabilities of his immediate family members to individual creditors were in an amount between $10,001 and $50,000 and that the principal business or occupation of the creditor was "Medical Services." On the gift section of the SOEI, the only gift from JW that ROBERT MCDONNELL disclosed was listed as "Lodging and entertainment" in the amount of $2,268, which was the amount JW paid for the boat rental for the defendants' use during their private family vacation at JW's multimillion-dollar home on Smith Mountain Lake in July 2011.

71. On or about January 20, 2012, MAUREEN MCDONNELL used all of the sale proceeds in her Brokerage Firm A brokerage account from the December 20, 2011, sale of Star Scientific stock to purchase 6,672 shares of Star Scientific stock.

72. On or about January 25, 2012, ROBERT MCDONNELL received an email from MU, who was

ROBERT MCDONNELL's brother-in-law and was assisting in the day-to-day operations of MoBo's beach rental properties. In the email, MU stated, "For MoBo, I talked with [MAUREEN MCDONNELL] last week and she had me talk to the guy who is helping us. He said he was going to call me the next day to get an address so he could send the first check. I did not hear from him and I left [MAUREEN MCDONNELL] a message yesterday. We'll need to get that in the next week so we can keep up-to-date."

73. On or about January 27, 2012, ROBERT MCDONNELL sent an email to MAUREEN MCDONNELL that forwarded MU's email and stated, "Maureen who are we talking about that is helping us and talking to [MU]?? [JW]?" That same day, MAUREEN MCDONNELL sent a response email to ROBERT MCDONNELL stating "Just got home. I'll talk w u upstairs."

74. In or about January 2012, the Virginia Secretary of Health and his staff were planning a reception for healthcare leaders that would occur at the Governor's Mansion on February 29, 2012. The Secretary of Health and his staff put together an invitation list of those individuals whom the Secretary wanted to recognize as leaders in healthcare policy in Virginia. The list did not include JW, Star Scientific executives, or researchers affiliated with Star Scientific. MAUREEN MCDONNELL informed JW about the reception and allowed JW to invite dozens of individuals, including Star Scientific executives, researchers affiliated with Star Scientific, and doctors whom Star Scientific was trying to convince to recommend Anatabloc® to their

patients. For example, on or about February 4, 2012, MAUREEN MCDONNELL emailed JW and a marketing representative for a Star Scientific affiliate and wrote:

> We appreciate the list of Docs that you sent, but wanted you to know that you didn't have to limit them to this area; It's a reception for Healthcare Leaders from all over the state of Virginia, so please expand on your list. I checked our number of invites, and if [JW] has any more than these 39 docs, send them along because we have room to invite more.

75. Because the healthcare leaders reception was to occur at the Governor's Mansion, the Secretary of Health's staff coordinated the invitation list with an OGV staff member who oversaw Mansion events. On or about February 8, 2012, the OGV staff member sent an email to a Secretary of Health staff member informing her that the defendants had reviewed the invitation list and that ROBERT MCDONNELL wanted to make sure that the "Head officers at VCU/MCV, UVA, EVMS, [and the] Massey Cancer Center" were included on the list.

76. On or about February 9, 2012, MAUREEN MCDONNELL sent an email to ROBERT MCDONNELL, with a courtesy copy to the personal email account of JE, who served on ROBERT MCDONNELL's staff as Counselor and Senior Policy Advisor to the Governor. The subject line of the email was "FW: Anatabine clinical studies – UVA, VCU, JHU." In the email, MAUREEN MCDONNELL stated, "Here's the info from JW He has calls in to VCU & UVA & no one will return his

calls." The email forwarded an earlier email from a Star Scientific employee to JW, which described the November 29, 2011, call between senior Star Scientific executives and senior UVa officials regarding UVa's role in submitting a grant application to the Tobacco Commission for research funding of Anatabloc® MAUREEN MCDONNELL's email to ROBERT MCDONNELL also forwarded two attachments. One of the attachments was an internal Star Scientific memorandum that set forth Star Scientific's talking points for its November 29, 2011, call with senior UVa officials, including a talking point that ROBERT MCDONNELL had expressed his support for a grant application to the Tobacco Commission for Anatabloc® research.

77 On or about February 9, 2012, JE sent a response email to MAUREEN MCDONNELL's email from earlier that day. JE stated, "Thanks, sorry for the delayed response, it has been very busy with session. Lets [sic] talk next week when you return."

78. On or about February 10, 2012, MAUREEN MCDONNELL sent a response email to JE's email, stating:

> Pls call [JW] today get him to fill u in on where this is at. Gov wants to know why nothing has developed w studies after [JW] gave $200,000. I'm just trying to talk w [JW.] Gov wants to get this going w VCU MCV Pls let us know what u find out after we return. [JW's] cell is 804-[xxx-xxxx]. Thanks, -mm

79. On or about February 16, 2012, at 11:56 p.m., ROBERT MCDONNELL sent an email to JW, stating "[JW]. Know u have been slammed. Do u want me to

call your lawyer on the certificates and the documents. Thanks for all your help. Gov." This email was in reference to a plan to have JW transfer shares of Star Scientific stock that JW owned to a Brokerage Firm A account for the defendants' use to fund MoBo.

80. On or about February 17, 2012, at 12:02 a.m., ROBERT MCDONNELL sent an email to JE stating "Pls see me about anatabloc issues at VCU and UVA. Thx." Within minutes, JE sent a response email to ROBERT MCDONNELL stating "will do. We need to be careful with this issue."

81. On or about February 22, 2012, MAUREEN MCDONNELL sent a text message to ROBERT MCDONNELL, stating "[JW] txted me 2 say he needs our brokers name and phone number to transfer shares this week."

82. On or about February 23, 2012, ROBERT MCDONNELL and MAUREEN MCDONNELL had a conference call with a Brokerage Firm A broker. During the call, the defendants informed the broker that they owned Star Scientific shares that were being held by Star Scientific and that the defendants wanted to transfer the shares into a Brokerage Firm A account. The defendants further stated that they planned on using the shares as collateral for a margin loan that would ultimately be utilized for MoBo. The defendants gave the broker JW's contact information and asked the broker to call JW in order to coordinate the transfer of the Star Scientific stock to the Brokerage Firm A account.

83. On or about February 29, 2012, ROBERT MCDONNELL had a private meeting with JW to

discuss potential ways that JW could transfer 50,000 shares of Star Scientific stock that JW owned to a brokerage account controlled by the defendants. ROBERT MCDONNELL and JW discussed whether such a transfer would be reportable by either ROBERT MCDONNELL or JW and their mutual interest in making sure that it was not.

84. On or about February 29, 2012, the defendants attended the reception at the Governor's Mansion for healthcare leaders in Virginia. Senior Star Scientific executives (including JW), researchers affiliated with Star Scientific, and medical professionals whom Star Scientific was attempting to impress (including from Virginia research universities) also attended the reception.

85. On or about February 29, 2012, immediately following the healthcare leaders reception at the Governor's Mansion, the defendants, JW, and a scientific researcher affiliated with Star Scientific attended a small dinner at the La Grotta restaurant in Richmond, Virginia. JW paid for the dinner, which cost approximately $1,423.

86. Because of concerns about disclosures that would be necessary if JW transferred 50,000 shares of Star Scientific stock to the defendants, JW and ROBERT MCDONNELL agreed that JW would simply transfer $50,000 to MoBo as a loan to the defendants. The loan was not documented and included a 2% interest rate and a three-year term. On or about March 6, 2012, JW instructed his assistant to write a check for $50,000 made payable to MoBo. To make it more difficult for anyone to discern that JW was transferring money to the

defendants, JW instructed his assistant that the check should not reference the defendants. When JW's assistant mistakenly put MAUREEN MCDONNELL's name in the memo line of the $50,000 check, JW instructed his assistant to void that check and write a new check without MAUREEN MCDONNELL's name, which the assistant did.

87 On or about March 12, 2012, ROBERT MCDONNELL sent a text message to JW stating "Do you have time tomorrow to talk with me on business matters. Governor. What time are you available."

88. On or about March 21, 2012, ROBERT MCDONNELL met with the Virginia Secretary of Administration to discuss the Virginia state employee health plan and ways to reduce healthcare costs in Virginia. During the meeting, ROBERT MCDONNELL pulled some Anatabloc® out of his pocket and told the Secretary of Administration and one of her staff members that Anatabloc® had beneficial health effects, that he personally took Analabloc®, and that it was working well for him. ROBERT MCDONNELL asked the Secretary of Administration and her staff member to reach out to the "Anatabloc people" and meet with them to discuss Anatabloc®.

89. On or about May 18, 2012, ROBERT MCDONNELL sent a text message to JW stating "Per voicemail would like to see if you could extend another 20K loan for this year. Call if possible and I'll ask [MU] to send instructions." JW sent a response text message to ROBERT MCDONNELL

stating "Done, tell me who to make it out to and address. Will FedEx."

90. On or about Tuesday, May 22, 2012, per JW's instructions, JW's assistant wire-transferred $20,000 to MoBo's bank account.

91. On or about May 25, 2012, JW sent a text message to ROBERT MCDONNELL stating "MoBo was done Tuesday. Golf game improving. Hope to play w you and Phil homestead. Star doing great." ROBERT MCDONNELL sent a response text message to JW stating "Thanks so much for the help. See you in a few weeks."

92. On or about June 13, 2012, ROBERT MCDONNELL sent an email to JW stating "Stock looking good. Well done. Gov."

93. On or about July 3, 2012, ROBERT MCDONNELL sent a text message to JW stating "Good announcements lately. Stock looks good. Hope all is well. You and [JW's wife] enjoy the 4th of July. Gov."

94. From on or about August 31, 2012, through on or about September 3, 2012, ROBERT MCDONNELL and MAUREEN MCDONNELL vacationed as JW's guests at the Chatham Bars Inn, a luxury resort and spa in Cape Cod, Massachusetts. JW, a research scientist affiliated with Star Scientific, one of ROBERT MCDONNELL's political advisors, and their wives accompanied the defendants on the vacation. JW paid for the vast majority of the costs of the trip, including flying the defendants to Cape Cod aboard JW's jet, private cottages at the resort, golf at the resort course, expensive dinners, and the charter of a sailing yacht.

95. From in or about November 2012 through in or about March 2013, the defendants obtained yard work and other miscellaneous home repairs at their personal residence from one of JW's brothers. Those services included the installation of a hot tub cover that JW purchased for the defendants and work to re-stain the defendants' deck at their personal residence.

96. On or about December 21, 2012, MAUREEN MCDONNELL called a Brokerage Firm A broker to discuss the 6,672 shares of Star Scientific stock held in her brokerage account. MAUREEN MCDONNELL informed the broker that she wanted individual brokerage accounts opened for each of the defendants' five children and that she wanted to transfer shares of Star Scientific stock into the children's accounts. MAUREEN MCDONNELL further informed the broker that these transfers had to occur before year-end in order to avoid reporting requirements related to the ownership of Star Scientific stock.

97. On or about December 26, 2012, MAUREEN MCDONNELL sent a letter to the Brokerage Firm A broker instructing him to transfer 1,000 shares of Star Scientific stock from her brokerage account to each of the defendants' five children's newly opened brokerage accounts. The Brokerage Firm A broker followed MAUREEN MCDONNELL's instructions and transferred a total of 5,000 Star Scientific shares from her account to the children's accounts. Although the transfers occurred on January 2, 2013, the transfers were made effective as of December 31, 2012, which resulted in MAUREEN MCDONNELL

holding 1,672 shares of Star Scientific stock – valued at approximately $4,480 – as of year-end.

98. On or about January 15, 2013, ROBERT MCDONNELL filed his SOEI. On the standardized disclosure form, ROBERT MCDONNELL stated that neither he nor any member of his immediate family owned securities valued in excess of $10,000 invested in any one business. On the personal liability section of the SOEI, ROBERT MCDONNELL stated that the personal liabilities of his immediate family members to individual creditors were in an amount between $10,001 and $50,000 and that the principal business or occupation of the creditor was "Health Care." On the gift section of the SOEI, the only gifts associated with JW that ROBERT MCDONNELL disclosed were expenses related to the defendants' luxury vacation at Chatham Bars Inn.

99. On or about January 21, 2013, MAUREEN MCDONNELL called JW's assistant to request that JW provide roundtrip airline tickets for two of the defendants' daughters to travel to a bachelorette party for one of the daughters in Savannah, Georgia. After getting JW's approval, JW's assistant made the travel arrangements for the defendants' daughters and obtained the tickets.

100. On or about January 24, 2013, MAUREEN MCDONNELL sent a text message to JW, stating:

> [JW]! Would you like to stay at our Beach house in Sandbridge for some of the time you're in Vir nia? Pick the best days and take the time with your family on the Ocean. Or You can have a Star Scientific retreat there and have your

team come down and join you for a meeting. If one of the weekends works out with his legislative schedule, I'll bring Bob down and then you'd have some private time to talk somewhere he's comfortable. Let me know what you think. Mm

101. On or about February 10, 2013, ROBERT MCDONNELL sent an email to the defendants' five children and courtesy-copied MAUREEN MCDONNELL. In the email, ROBERT MCDONNELL stated in relevant part, "Kids. Asking for help, need to rent the beach houses at Sandbridge more. Willing to give your friends a discount for the times it's tougher to rent." The next day, MAUREEN MCDONNELL forwarded ROBERT MCDONNELL's email to JW

G. *The Defendants' Efforts to Conceal the Scheme*

102. On or about October 3, 2012, as part of required paperwork for a loan on one of the MoBo Virginia Beach properties through TowneBank, ROBERT MCDONNELL caused TowneBank to receive a personal financial statement that listed total liabilities of $2,075,000 and listed no other loans payable. The financial statement did not list any of the loans from JW

103. On or about February 1, 2013, ROBERT MCDONNELL and MAUREEN MCDONNELL caused a signed Uniform Residential Loan Application to be transmitted to PenFed as part of an effort to refinance four loans, including loans on the two MoBo Virginia Beach properties. The Uniform Residential Loan Application listed total liabilities of

$2,837,226 and listed no loans from or liabilities to JW It also did not list any Star Scientific securities held by the defendants as assets.

104. On or about February 15, 2013, MAUREEN MCDONNELL was interviewed by law enforcement officers regarding the $50,000 and $15,000 checks from JW in May 2011. Although MAUREEN MCDONNELL stated that the $50,000 check was a personal loan from JW and that she had asked JW for the loan to help with the defendants' expenses and cash flow, she falsely claimed that there was a loan agreement that she had signed and that she was making periodic payments on the $50,000 loan. MAUREEN MCDONNELL described JW throughout the interview as a friend and falsely claimed that ROBERT MCDONNELL had met JW "many years ago." She further falsely claimed that ROBERT MCDONNELL first met JW when they both worked together at American Hospital Supply following ROBERT MCDONNELL's discharge from the United States Army.

105. On or about February 18, 2013 – three days after MAUREEN MCDONNELL was interviewed by law enforcement – ROBERT MCDONNELL sent a five-page fax to a loan officer at PenFed. On the first-page coversheet, ROBERT MCDONNELL wrote, "I reviewed the general loan application again this weekend and made some updates concerning information that was incomplete." The remaining four pages of the fax included handwritten changes by ROBERT MCDONNELL to the Uniform Residential Loan Application that had been originally signed by both defendants and sent to PenFed on or about February

1, 2013. The original loan application submitted by the defendants to PenFed did not include any reference to liabilities resulting from the $120,000 in loans from JW. ROBERT MCDONNELL's handwritten changes on or about February 18, 2013 listed $50,000 of liabilities to JW and $70,000 of liabilities to Starwood Trust, which was the entity through which JW had funded the loans to the defendants. ROBERT MCDONNELL further stated in his handwritten changes that payments due on the loans were zero and that the loans were unsecured. ROBERT MCDONNELL's handwritten changes on February 18, 2013, also listed 1,672 shares of Star Scientific stock with a value of $3,143 in the assets portion of the loan application.

106. In or about March 2013, MAUREEN MCDONNELL met with JW's brother at the defendants' residence and told JW's brother that she had been interviewed by law enforcement. At that meeting, MAUREEN MCDONNELL – for the first time – asked JW's brother to send her a bill for the work JW's brother had performed for the defendants since approximately November 2012. Thereafter, on or about March 4, 2013, JW's brother sent an email to MAUREEN MCDONNELL stating "Find attached a list of expenditures for your residence."

107 In or about March 2013, after telling JW's brother that she had been interviewed by law enforcement, MAUREEN MCDONNELL also gave JW's brother a box and letter. MAUREEN MCDONNELL asked JW's brother to give it to JW for her, and JW's brother caused it to be delivered to JW's house. The box included some of the clothing JW had purchased for MAUREEN MCDONNELL in

April 2011, and it included a handwritten note from MAUREEN MCDONNELL to JW and his wife stating:

> I can't begin to thank you how special you made me feel on [CM's] wedding day and on our 35th Wedding Anniversary Day all dressed up in the beautiful outfits you adorned me in on both momentous occasions. I'm so happy we've been able to share so many significant milestones in our lives with you both! I truly hope your daughter will now be able to enjoy these lovely outfits and show them off on many grand occasions. If not, I'm sure there are many exemplary charitable organizations like we talked about who would welcome the opportunity to auction them for a wonderful cause having been worn only once by the First Lady of Virginia to her daughter's Wedding at the Executive Mansion and celebrating her 35th Wedding Anniversary with the Governor. Actually, if that happens I think I'll be there to bid on them myself! Please know that we cherish our friendship with you and look forward to many more wonderful memories together ahead! XOXO! Maureen McDonnell

COUNT ONE

(Conspiracy to Defraud the Citizens of Virginia of Their Right to Honest Services by Use of Interstate Wires)

108. The allegations set forth in paragraphs 1 through 107 are repeated and realleged as if set forth fully herein.

109. From in or about April 2011 through in or about March 2013, in the Eastern District of Virginia and elsewhere, defendants

ROBERT F. MCDONNELL and
MAUREEN G. MCDONNELL

did knowingly and intentionally conspire with each other and with others, both known and unknown to the grand jury, to commit wire fraud, that is: having devised and intending to devise a scheme and artifice to defraud the citizens of Virginia of their right to the honest services of the Governor of Virginia through bribery, to transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

PURPOSE

110. A purpose of the conspiracy was for the defendants to secretly use ROBERT MCDONNELL's official position as Governor of Virginia to enrich the defendants and their family members by soliciting and accepting payments, loans, gifts, and other things of value from JW and Star Scientific in exchange for ROBERT F. MCDONNELL and the OGV performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products.

MANNER AND MEANS

111. The manner and means by which the defendants would and did carry out the conspiracy included, but were not limited to, the following:

a. the defendants soliciting and obtaining, both directly and indirectly, for themselves and their family members financial payments, loans, gifts, and other things of value from JW and Star Scientific;

b. the defendants taking steps to conceal from the citizens of Virginia the things of value received from JW and Star Scientific in order to hide the nature and scope of their dealings with JW, including by routing things of value through family members and corporate entities controlled by the Governor in an effort to avoid annual disclosure requirements on the Governor's SOEIs;

c. ROBERT MCDONNELL and the OGV providing favorable official action on behalf of JW and Star Scientific as opportunities arose, including the official actions set forth below in (i)-(v);

   i. arranging meetings for JW with Virginia government officials, who were subordinates of the Governor, to discuss and promote Anatabloc®;

   ii. hosting, and the defendants attending, events at the Governor's Mansion designed to encourage Virginia university researchers to initiate studies of anatabine and to promote Star Scientific's products to doctors for referral to their patients;

   iii. contacting other government officials in the OGV as part of an

effort to encourage Virginia state research universities to initiate studies of anatabine;

iv. promoting Star Scientific's products and facilitating its relationships with Virginia government officials by allowing JW to invite individuals important to Star Scientific's business to exclusive events at the Governor's Mansion; and

v. recommending that senior government officials in the OGV meet with Star Scientific executives to discuss ways that the company's products could lower healthcare costs.

(All in violation of Title 18, United States Code, Section 1349)

COUNTS TWO THROUGH FOUR

(Use of Interstate Wire Communications to Further Scheme to Defraud the Citizens of Virginia of Their Right to Honest Services)

112. The allegations set forth in paragraphs 1 through 107 and 110 through 111 are repeated and realleged as if set forth fully herein.

113. On or about the respective dates shown below, each such date constituting a separate count of this Indictment, within the Eastern District of Virginia and elsewhere, defendants

ROBERT F. MCDONNELL and
MAUREEN G. MCDONNELL

and others known and unknown to the grand jury, knowingly and intentionally, having devised and intending to devise a scheme and artifice to defraud the citizens of Virginia of their right to the honest services of the Governor of Virginia through bribery, for the purposes of executing such scheme and artifice, transmitted and caused to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds, that is the following:

Count	Date	Description
2	5/26/2011	Wire communication from BB&T Bank in the Eastern District of Virginia to a location outside the Commonwealth of Virginia to cause the transfer of funds from $15,000 check from JW via Starwood Trust to wedding catering company account with BB&T Bank
3	3/12/2012	Wire communication from TowneBank in the Eastern District of Virginia to a location outside the Commonwealth of Virginia to cause transfer of funds from $50,000 check from JW via Starwood Trust to MoBo account with TowneBank
4	5/22/2012	Wire communication from the Eastern District of Virginia to a BB&T Bank location outside the

		Commonwealth of Virginia to cause the transfer of $20,000 from JW via Starwood Trust to MoBo account with TowneBank

(All in violation of Title 18, United States Code, Sections 1343 and 2.)

COUNT FIVE

(Conspiracy to Obtain Property under Color of Official Right)

114. The allegations set forth in paragraphs 1 through 107 and 110 through 111 are repeated and realleged as if set forth fully herein.

115. From in or about April 2011 through in or about March 2013, in the Eastern District of Virginia and elsewhere, defendants

ROBERT F. MCDONNELL and MAUREEN G. MCDONNELL

did knowingly and intentionally conspire with each other and with others, both known and unknown to the grand jury, to obstruct, delay, and affect in any way and degree commerce, and the movement of articles and commodities in commerce, by extortion, as those terms are defined in Title 18, United States Code, Section 1951, that is to obtain property, not due ROBERT MCDONNELL or his office and to which ROBERT MCDONNELL was not entitled, from JW and Star Scientific, with their consent, under color of official right.

(All in violation of Title 18, United States Code, Section 1951.)

COUNTS SIX THROUGH ELEVEN

(Obtaining Property under Color of Official Right)

116. The allegations set forth in paragraphs 1 through 107 and 110 through 111 are repeated and realleged as if set forth fully herein.

117 On or about the respective dates shown below, each such date constituting a separate count of this Indictment, within the Eastern District of Virginia and elsewhere, defendants

ROBERT F. MCDONNELL and MAUREEN G. MCDONNELL

and others known and unknown to the grand jury, knowingly and intentionally attempted to, did, and caused each other and others to obstruct, delay, and affect in any way and degree commerce, and the movement of articles and commodities in commerce, by extortion, as those terms are defined in Title 18, United States Code, Section 1951, that is the defendants attempted to obtain, did obtain, and caused each other and others to obtain the property listed below, not due ROBERT MCDONNELL or his office and to which ROBERT MCDONNELL was not entitled, from JW and Star Scientific, with their consent, under color of official right:

Count	Date	Description
6	5/23/2011	$50,000 check from Starwood Trust
7	5/23/2011	$15,000 check from Starwood Trust
8	5/29/2011	$2,380 in greens fees, caddie fees, merchandise, and

		dining expenses at Kinloch Golf Club
9	1/7/2012	$1,424 in greens fees, caddie fees, merchandise, and dining expenses at Kinloch Golf Club
10	3/6/2012	$50,000 check from Starwood Trust
11	5/22/2012	$20,000 wire transfer from Starwood Trust

(All in violation of Title 18, United Slates Code, Sections 1951 and 2.)

COUNT TWELVE

(False Statement)

118. The allegations set forth in paragraphs 1 through 107 are repeated and realleged as if set forth fully herein.

119. On or about October 3, 2012, within the Eastern District of Virginia and elsewhere, defendant

ROBERT F. MCDONNELL

knowingly made a false statement and report for the purpose of influencing the action of TowneBank, the accounts of which were insured by the Federal Deposit Insurance Corporation, upon an application, commitment, and loan, and any change and extension of any of the same, by renewal, deferment of action, and otherwise, in that on ROBERT MCDONNELL's personal financial statement submitted to TowneBank, he stated that his liabilities totaled $2,075,000, when in truth and in fact, as the defendant well knew, ROBERT MCDONNELL owed at least $50,000 to JW that was

not reflected on his personal financial statement and was not included in the total liabilities listed.

(All in violation of Title 18, United States Code, Sections 1014 and 2.)

COUNT THIRTEEN

(False Statement)

120. The allegations set forth in paragraphs 1 through 107 arc repeated and realleged as if set forth fully herein.

121. On or about February 1, 2013, within the Eastern District of Virginia and elsewhere, defendants

ROBERT F. MCDONNELL and
MAUREEN G. MCDONNELL

knowingly made a false statement and report for the purpose of influencing the action of PenFed, a federal credit union, upon an application, commitment, and loan, and any change and extension of any of the same, by renewal, deferment of action, and otherwise, in that on the joint Uniform Residential Loan Application submitted to PenFed, the defendants listed total liabilities of $2,837,226 and listed no loans from or liabilities to JW, when in truth and in fact, as the defendants well knew, the defendants had received at least $120,000 in loans from JW that were not reflected on their joint Uniform Residential Loan Application and were not included in the total liabilities listed.

(All in violation of Title 18, United States Code, Sections 1014 and 2.)

COUNT FOURTEEN

(Obstruction of an Official Proceeding)

122. The allegations set forth in paragraphs 1 through 107 are repeated and realleged as if set forth fully herein.

123. In or about March 2013, within the Eastern District of Virginia and elsewhere, defendant

MAUREEN G. MCDONNELL

attempted to and did corruptly obstruct, influence, and impede an official proceeding of the Grand Jury, that is, MAUREEN MCDONNELL wrote and caused to be delivered a handwritten note to JW in which she falsely attempted to make it appear that she and JW had previously discussed and agreed that the defendant would return certain designer luxury goods rather than keep them permanently.

(All in violation of Title 18, United States Code, Sections 1512(c)(2) and 2.)

FORFEITURE NOTICE

Pursuant to Federal Rule of Criminal Procedure 32.2(a), the defendants are notified that upon conviction of the offenses alleged in Counts 1–11 of this Indictment, they shall forfeit any property, real or personal, which they obtained directly or indirectly and which constitutes or is derived from proceeds traceable to the offenses of conviction. Property subject to forfeiture includes but is not limited to the following:

The sum of not less than $140,805.46;
Black Rebecca Minkoff shoes;
Black Louis Vuitton shoes;
While Louis Vuitton shoes;

Cream Louis Vuitton purse;
Cream Louis Vuitton wallet;
Silver Rolex Watch engraved with "71st Governor of Virginia";
Yellow Peter Som dress;
Blue Armani jacket and two matching dresses;
Two Gold Oscar de la Renta dresses;
Black Louis Vuitton rain coat;
Gold Oscar de la Renta sweater;
One pair of Amelia Rose earrings;
One Gear sweatshirt;
Two pairs of Foot Joy golf shoes;
One button-down Ralph Lauren shirt;
One white Peter Millar golf shirt;
One baby blue striped Peter Millar golf shirt;
One royal blue Peter Millar golf shirt;
One aqua Fairway Greene Tech golf shirt;
One white striped Ralph Lauren golf shirt;
One Ping University of Virginia golf bag;
One Ping Kinloch golf bag;
One Sun Mountain Notre Dame golf bag;
Two sets of golf clubs;
One Heather Mackenzie water color and frame;
Two iPhones; and
30 boxes of Anatabloc®.

If property subject to forfeiture is not available, the United States will seek an order forfeiting substitute assets in accordance with Title 21, United Stales Code, Section 853(p).

(In accordance with Title 18, United States Code, Section 981(a)(l)(C); Title 28, United States Code, Section 2461(c); and Title 18, United States Code, Section 982(a)(2).)

A TRUE BILL

DANA J. BOENTE
Acting United States Attorney

By:_____
Michael S. Dry
Jessica D. Aber
Ryan S. Faulconer
Assistant United States Attorneys

JACK SMITH
Chief, Public Integrity Section
Criminal Division
U.S. Department of Justice

By:_____
David V Harbach, II
Deputy Chief

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,

Plaintiff;

Criminal Action 3:14CR12

v.

ROBERT F. McDONNELL and MAUREEN G. McDONNELL,

Defendants.

September 2, 2014
Richmond, Virginia
9:45 a.m.

JURY TRIAL VOLUME XXVI

BEFORE: HONORABLE JAMES R. SPENCER
United States District Judge

APPEARANCES: MICHAEL S. DRY, ESQ.
DAVID V HARBACH, II, ESQ.
JESSICA D. ABER, ESQ.
RYAN S. FAULCONER, ESQ.
RICHARD D. COOKE, ESQ.
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DANIEL KOFFMANN, ESQ.
Counsel for Maureen G. McDonnell.

JEFFREY B. KULL
OFFICIAL COURT REPORTER

* * *

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THE COURT:

Now, we come to the offense instructions. Count One charges conspiracy to commit honest services wire fraud. Count One of the indictment charges that from in or about April, 2011 through in or about March, 2013, in the Eastern District of Virginia and elsewhere, defendants, Robert F. McDonnell and Maureen G. McDonnell, did knowingly and intentionally conspire with each other and with others, both known and unknown to the grand jury, to commit wire fraud; that is, having devised and intending to devise a scheme and artifice to defraud the citizens of Virginia of their right to the honest services of the Governor of Virginia through bribery, to transmit and cause to be transmitted by means of wire communication in interstate commerce writings,

signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice in violation of Title 18 United States Code Section 1343.

Count One of the indictment further charges that a purpose of the conspiracy was for the defendants to secretly use Robert McDonnell's official position as Governor of Virginia to enrich the defendants and their family members by soliciting and accepting payments, loans, gifts, and other things of value from Jonnie Williams, Sr. and Star Scientific in exchange for Robert McDonnell and the Office of the Governor of Virginia performing official actions on an as-needed basis as opportunities arose to legitimize, promote, and obtain research studies for Star Scientific products.

Count One also charges that the manner and means by which the defendants would and did carry out the conspiracy included, but were not limited to, the following:

A: The defendants soliciting and obtaining, both directly and indirectly, for themselves and their family members, financial payments, loans, gifts, and other things of value from Jonnie Williams, Sr. and Star Scientific.

B: The defendants taking steps to conceal from the citizens of Virginia the things of value received from Jonnie Williams, Sr. and Star Scientific in order to hide the nature and scope of their dealings with Jonnie Williams, Sr., including by routing things of value through family members and corporate entities controlled by the Governor in an effort to avoid annual disclosure requirements on the Governor's Statement of Economic Interests.

C: Robert McDonnell and the office of the Governor of Virginia providing favorable action on behalf of Jonnie Williams, Sr., and Star Scientific as opportunities arose, including the official actions set forth in five paragraphs which read as follows:

First: Arranging meetings for Jonnie Williams, Sr. with Virginia government officials who were subordinates of the Governor to discuss and promote Anatabloc;

Second: Hosting and the defendants attending events at the Governor's Mansion designed to encourage Virginia university researchers to initiate studies of anatabine and to promote Star Scientific products to doctors for referral to their patients;

Third: Contacting other government officials in the Office of the Governor of Virginia as part of an effort to encourage Virginia state research universities to initiate studies of anatabine;

Fourth: Promoting Star Scientific's products and facilitating its relationships with Virginia government officials by allowing Jonnie Williams, Sr. to invite individuals important to Star Scientific's business to exclusive events at the Governor's Mansion;

Fifth: Recommending that senior government officials in the Office of the Governor of Virginia meet with Star Scientific executives to discuss ways that the company's products could lower healthcare costs.

All in violation of Title 18 U.S. Code Section 1349.

Now, the statute that undergirds the charge in Count One, conspiracy to commit honest services fraud, reads as follows: Title 18 U.S. Code Chapter

63, Section 1349, provides in pertinent part: Any person who conspires to commit any offense under this Chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the conspiracy. In turn, Title 18 U.S. Code Chapter 63, Section 1343, provides in pertinent part: Whoever, having devised or intending to devise any scheme or artifice to defraud, transmits or causes to be transmitted by means of wire communication in interstate commerce any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice shall be guilty of an offense against the United States.

In turn, Title 18 U.S. Code Chapter 63, Section 1346, provides in pertinent part: For the purpose of this Chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

Now, the elements of the offense as charged in Count One, conspiracy to commit honest services wire fraud, are as follows, and the government must prove these elements beyond a reasonable doubt. And there are three essential elements.

First: That the conspiracy, agreement, or understanding to commit honest services wire fraud as charged in the indictment was formed, reached, or entered into by two or more persons.

Second: That at some time during the existence or life of the conspiracy, agreement, or understanding, the defendant you are considering knew the purpose of the agreement.

Third: That with knowledge of the purpose of the conspiracy, agreement, or understanding, the

defendant you are considering then deliberately joined the conspiracy, agreement, or understanding.

A criminal conspiracy is an agreement or mutual understanding knowingly made or knowingly entered into by at least two people to violate the law by some joint or common plan or course of action. A conspiracy is, in a very true sense, a partnership in crime.

A conspiracy or agreement to violate the law, like any other kind of agreement or understanding, need not be formal, written, or even expressed directly in every detail. The government must prove that the defendant you are considering, and at least one other person, knowingly and deliberately arrived at an agreement or understanding that they, and perhaps others, would violate some laws by means of some common plan or course of action as alleged in the indictment. It is proof of this conscious understanding and deliberate agreement by the alleged members that should be central to your consideration of the charge of conspiracy.

To prove the existence of a conspiracy or an illegal agreement, the government is not required to produce a written contract between the parties, or even produce evidence of an express oral agreement spelling out all of the details of the understanding. To prove that a conspiracy existed, moreover, the government is not required to show that all of the people named in the indictment as members of the conspiracy were in fact parties to the agreement, or that all of the members of the alleged conspiracy were named or charged, or that all of the people whom the evidence shows were actually members of

the conspiracy agreed to all of the means or methods set out in the indictment.

Unless the government proves beyond a reasonable doubt that a conspiracy as I've just explained actually existed, then you must acquit the defendants.

Before the jury may find that a defendant or any other person became a member of the conspiracy charged in Count One of the indictment, the evidence in the case must show beyond a reasonable doubt that the defendant you are considering knew the purpose or goal of the agreement or understanding, and deliberately entered into the agreement intending in some way to accomplish the goal or purpose by this common plan or joint action.

If the evidence establishes beyond a reasonable doubt that the defendant you are considering knowingly and deliberately entered into an agreement to commit the offense alleged in Count One of the indictment, the fact that the defendant did not join the agreement at its beginning, or did not know all of the details of the agreement, or did not know all of his or her co-conspirators, or did not participate in each act of the agreement, or did not play a major role in accomplishing the unlawful goal, or had only a slight connection with the conspiracy, is not important to your decision regarding membership in the conspiracy

Merely associating with others and discussing common goals, mere similarity of conduct between or among such persons, merely being present at the place where a crime takes place or is discussed, or even knowing about criminal conduct, does not of

itself make someone a member of the conspiracy or a conspirator.

The government is not required to prove that the parties to or members of the alleged agreement or conspiracy were successful in achieving any or all of the objects of the agreement or conspiracy.

Now we come to the substantive counts, Two through Four. Number One was the conspiracy count, and it was conspiracy to commit honest services wire fraud. Counts Two through Four are actual honest services wire fraud counts.

Counts Two through Four of the indictment charge that on or about the respective dates shown below, each such date constituting a separate count of this indictment, within the Eastern District of Virginia and elsewhere, defendants, Robert F McDonnell and Maureen G. McDonnell, and others known and unknown to the grand jury, knowingly and intentionally, having devised and intended to devise a scheme and artifice to defraud the citizens of Virginia of their right to the honest services of the Governor of Virginia through bribery for purposes of executing such scheme and artifice, transmitted and caused to be transmitted by means of wire communication in interstate commerce writings, signs, signals, pictures, and sounds that is the following. Count Two: The date, 5-26-2011, May 26th, 2011, wire communication from BB&T Bank, in the Eastern District of Virginia, to a location outside the Commonwealth of Virginia to cause the transfer of funds from $15,000 check from Jonnie Williams, Sr. via Starwood Trust to wedding catering company account with BB&T.

The third count: The date, March 12th of the year 2012, a wire communication from TowneBank, in the Eastern District of Virginia, to a location outside the Commonwealth of Virginia, to cause the transfer of funds from a $50,000 check from Jonnie Williams, Sr. via Starwood Trust to MoBo Realty account with TowneBank.

The fourth count: The date, May 22nd of the year 2012, a wire communication from the Eastern District of Virginia to BB&T Bank, a BB&T Bank location outside the Commonwealth of Virginia, caused the transfer of $20,000 from Jonnie Williams, Sr. via Starwood Trust to MoBo Realty account with TowneBank.

All in violation of Title 18 U.S. Code Sections 1343 and Section 2.

Now, the statute which undergirds Counts Two through Four, honest services wire fraud. Title 18 U.S. Code Chapter 63 Section 1343 provides in pertinent part: Whoever having devised or intended to devise any scheme or artifice to defraud transmits or causes to be transmitted by means of wire communication in interstate commerce any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be guilty of an offense against the United States. And Title 18 U.S. Code Chapter 63 Section 1346 provides in pertinent part: For purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services.

Now, the elements of the offense of honest services wire fraud. To prove honest services wire fraud as

charged in Counts Two through Four, the government must prove four essential elements beyond a reasonable doubt. First: That the defendant you are considering knowingly devised or participated in a scheme to defraud the public of its right to the honest services of a public official through bribery as charged in each count. Second: That the defendant you are considering did knowingly and with an intent to defraud did so knowingly and with an intent to defraud. The second element: That the defendant you are considering did knowingly — did so knowingly and with an intent to defraud. The third element: That the scheme and artifice to defraud involved a material misrepresentation, false statement, false pretense or concealment of a material fact. And the fourth element: That in advancing or furthering or carrying out the scheme to defraud, the defendant you are considering transmitted or caused to be transmitted the writing, sign, signal, picture or sound alleged by means of a wire communication in interstate commerce as charged in each count.

Now, the first element of honest services wire fraud is that the defendant you are considering knowingly devised or participated in the scheme or artifice to defraud the public of its right to a public official's honest services through bribery.

A scheme is a plan or course of action formed with the intent to accomplish some purpose. Thus, the government must prove beyond a reasonable doubt that the defendant you are considering devised or participated in a plan or course of action involving bribes given or offered to a public official or solicited or accepted by a public official.

It is not necessary to find that the defendant was actually successful in defrauding anyone, nor is it necessary to find that anyone was actually deprived of the right to a public official's honest services through bribery. An unsuccessful scheme or plan is as illegal as a scheme or plan that is ultimately successful.

Public officials, such as governors, owe a duty to the public. When a public official devises or participates in a bribery scheme, that official violates the public's right to that public official's honest services. This is because although the public official is outwardly purporting to be exercising independent judgment in passing on official matters, in fact, the official has been paid for his official actions. The public is defrauded because the public is not receiving what it expects and is entitled to; namely, the public official's honest services.

Additionally, a defendant need not be a public official to be guilty of this offense. A private citizen, for instance, does not owe a duty of honest services to the public, but can be found guilty of honest services fraud if that defendant devises or participates in a bribery scheme intended to deprive the public of its right to a public official's honest services.

Now, a definition of this term bribery that you've heard a number of times. Bribery involves the exchange of a thing or things of value for official action by a public official. In other words, a quid pro quo. You've heard that phrase, the Latin phrase, meaning "this for that" or "these for those." Bribery means that a public official demanded, sought or received something of value as described in the

indictment and that the public official demanded, sought or received the item of value corruptly in return for being influenced in the performance of any official act. Bribery also includes a public official's solicitation or agreement to accept a thing of value in exchange for official action whether or not the payor actually provides the thing of value and whether or not the public official ultimately performs the requested official action or intends to do so. Thus, it is not necessary that the scheme actually succeeded or that any official action was taken by the public official in the course of the scheme. What the government must prove is that the defendant you are considering knowingly devised and participated in a scheme or artifice to defraud the public and the government of their right to a public official's honest services through bribery.

Corruptly means having an improper motive or purpose. An act is done corruptly if it is performed knowingly and dishonestly for a wrongful purpose.

The public official and the payor need not state the quid pro quo in express terms. Otherwise, the law's effects — or effect could be frustrated by knowing winks and nods. Rather, the intent to exchange may be established by circumstantial evidence, based on the defendant's words, conduct, acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.

The thing of value in a bribery exchange need not be provided directly or indirectly to the public official, but may be provided to another person or entity at

the public official's request or with the public official's agreement.

A public official need not have solicited or accepted the thing of value only in exchange for the performance of official action. If you find beyond a reasonable doubt that a public official solicited or received a thing of value at least in part in exchange for the performance of official action, then it makes no difference that the public official may also have had another lawful motive for soliciting or accepting the thing of value.

The government need not prove that the thing of value caused the public official to change his position. In other words, it is not a defense to claim that a public official would have lawfully performed the official action in question anyway, regardless of the bribe. It is also not a defense that the official action was actually lawful, desirable, or even beneficial to the public. The offense of honest services fraud is not concerned with the wisdom or results of the public official's decisions or actions, but rather with the manner in which the public official makes his or her decisions or takes his or her actions.

Now, you've heard this term official action several times, and I will define it for you. The term official action means any decision or action on any question, matter, cause, suit, proceeding, or controversy, which may at any time be pending, or which may by law be brought before any public official, in such public official's official capacity. Official action as I just defined it includes those actions that have been clearly established by settled practice as part of a public official's position, even if the action was not

taken pursuant to responsibilities explicitly assigned by law. In other words, official actions may include acts that a public official customarily performs, even if those actions are not described in any law, rule, or job description. And a public official need not have actual or final authority over the end result sought by a bribe payor so long as the alleged bribe payor reasonably believes that the public official had influence, power or authority over a means to the end sought by the bribe payor. In addition, official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end.

The second element of honest services wire fraud as charged in Counts Two through Four is that the defendant you are considering devised or participated in the scheme knowingly and with the specific intent to defraud.

Intent to defraud means to act knowingly and with the specific intent to deceive, for the purpose of depriving the public and government of their right to a public official's honest services.

The third element of honest services wire fraud as charged in Counts Two through Four is that the scheme or artifice to defraud involved a material misrepresentation, false statement, false pretense, or concealment of a fact. A statement, representation, claim, or document is false if it is untrue when made and was then known to be untrue by the person making it or causing it to be made. A representation, statement, false pretense, or omission is material if it has a natural tendency to influence or is capable of

influencing a decision or action by the public official or the government office or agency that employed the public official.

The phrase "transmit — transmits or causes to be transmitted by means of wire communication in interstate commerce" means to send or cause to be sent from one state to another by means of telephone or telegraph lines. The phrase "transmits or caused to be transmitted by means of wire communication in interstate commerce" includes causing a telephone conversation by a person in one state with a person in another state. It also means causing e-mail communication or other communication through servers connected to the Internet from a person or server in one state to a person or server in another.

The use of a wire communication facility in interstate commerce is an essential element of the offense of wire fraud charged in Counts Two through 4 of the indictment. The wire communication need not contain a fraudulent representation or purpose or request for money. It must, however, further or assist in the carrying out of the scheme to defraud. It is not necessary for the defendants to be directly or personally involved in a communication, as long as the communication was reasonably foreseeable in the execution of the alleged scheme to defraud in which you find that the defendants agreed to have participated.

Evidence that the defendant you are considering agreed to cause a communication by others is sufficient. This does not mean that the defendant you are considering must specifically have authorized others to do the communication. When one does an

act with knowledge that the use of a wire communication will follow in the ordinary course of business or where such use of a communication can reasonably be foreseen, even though not actually intended, then one causes the interstate wire communication to be used. It is not necessary that the defendant you are considering know that a wire communication will be between states.

Now, as First Lady of Virginia, defendant Maureen G. McDonnell was not a public official and did not owe a duty of honest services to the citizens of Virginia. As such, she cannot be guilty of depriving the public of her honest services.

Rather, as alleged by the government in this case, Maureen McDonnell can be guilty of the substantive offense of honest services wire fraud only if you find that she conspired with Robert McDonnell at the time he was Governor of the Commonwealth of Virginia to deprive the citizens of Virginia of their right to the Governor's honest service.

This is based on the legal rule that a member of a conspiracy who commits another crime during the existence or life of a conspiracy and commits this other crime in order to further or somehow advance the goals or objectives of the conspiracy, may be found by you to be acting as the agent of the other members of the conspiracy. The illegal actions of this person in committing this other crime may be attributed to other individuals who are then members of the conspiracy. Under certain conditions, therefore, a defendant may be found guilty of this other crime even though he or she did not participate directly in the acts constituting the offense.

If you find that the government has proven Maureen McDonnell guilty of conspiracy beyond a reasonable doubt, as charged in Count One of the indictment, you may also find Maureen McDonnell guilty of the substantive offense of honest services wire fraud as alleged in Counts Two through Four of the indictment, provided you find that the essential elements of these counts as defined in these instructions has been established beyond a reasonable doubt, and further — and provided further, that you also find beyond a reasonable doubt that one: The substantive offense of honest service wire fraud as described in Counts Two through Four of the indictment was committed by Robert McDonnell. Two: That Robert McDonnell committed the substantive crime of honest services wire fraud during the existence or life of and in furtherance of the goals or objectives of the conspiracy detailed in Count One of the indictment. And three: At the time that this offense was committed, Maureen McDonnell was a member of the conspiracy as detailed in Count One of the indictment.

However, if the government has not proved beyond a reasonable doubt that the conspiracy as detailed in Count One of the indictment existed or if the government has not proven beyond a reasonable doubt that Robert McDonnell committed the crime of honest services fraud, then you must acquit Maureen McDonnell of Counts Two through Four.

We come now to Count Five, the nature of the offense charged. In Count Five, conspiracy to obtain property under color of official right. Count Five of the indictment charges that from in or about April 2011 through in or about March 2013, in the Eastern

District of Virginia and elsewhere, defendants Robert F McDonnell and Maureen G. McDonnell did knowingly and intentionally conspire with each other and with others, both known and unknown to the grand jury, to obstruct, delay, and affect in any way and degree commerce, and the movement of articles and commodities in commerce, by extortion, as those terms are defined in Title 18 U.S. Code, Section 1951, that is to obtain property, not due Robert McDonnell or his office and to which Robert McDonnell was not entitled, from Jonnie Williams, Sr. and Star Scientific, with their consent, under color of official right. All in violation of Title 18, U.S. Code, Section 1951.

The statutes Title 18, U.S. Code, Section 1951(a) provides in pertinent part that whoever conspires to in any way or degree obstruct, delay, or affect commerce or the movement of any article or commodity in commerce by extortion is guilty of an offense against the United States.

In turn, Title 18, U.S. Code, Section 1951(b)(2) provides in pertinent part the term "extortion" means obtaining of property from another, with his consent, under color of official right. In addition, Title 18, U.S. Code, Section 1951(b)(3) provides in pertinent part the term "commerce" means all commerce between any point in any state, territory, possession, or the District of Columbia and any point out outside thereof; all commerce between points within the same state through any place outside such state; and all other commerce over which the United States has jurisdiction.

Now, to prove a conspiracy as charged in Count Five, the government must prove the same three elements beyond a reasonable doubt that they have to prove for Count One. I've already explained to you the elements of the conspiracy. I'll go through these elements again.

First: That the conspiracy, agreement, or understanding to obtain property under color of official right, as charged in the indictment, was formed, reached, and entered into by two or more persons. Second: That at some time during the existence or life of the conspiracy, agreement, or understanding, the defendant you are considering knew the purpose of the agreement. And third: With knowledge of the purpose of the conspiracy, agreement, or understanding, the defendant you are considering then deliberately joined the conspiracy, agreement, or understanding.

The other conspiracy instructions which I gave you earlier with respect to Count One apply acknowledgment ally to this conspiracy count as alleged in Count Five.

All right. We've been sitting for an hour. We're going to take a break. Let's make it 15 minutes.

(Recess taken from 10:52 a.m. until 11:13 a.m.)

(The jury entered the courtroom.)

THE COURT: All right. We'll now discuss Counts Six through Eleven. These are substantive counts of obtaining property under color of official right. Counts Six through Eleven of the indictment charge that on or about the respective dates shown below, each such date constituting a separate count of this indictment, within the Eastern District of

Virginia and elsewhere, defendants Robert F McDonnell and Maureen G. McDonnell and others known and unknown to the grand jury, knowingly and intentionally attempted to, did, and cause each other and others to obstruct, delay, and effect in any way and degree commerce, the movement of articles and commodities in commerce, by extortion, as those terms are defined in Title 18, U.S. Code, Section 1951, that is the defendants attempted to obtain, did obtain, and cause each other and others to obtain the property listed below not, due Robert McDonnell or his office and to which Robert McDonnell was not entitled, from Jonnie Williams, Sr. and Star Scientific, with their consent, under color of official right: Count Six, the date May 23rd, 2011, a $50,000 check from Starwood Trust. Count Seven, May 23rd, 2011, a $15,000 check from Starwood Trust. Count Eight, May 29th, 2011, $2,390 in green fees, caddie fees, merchandise, and dining expenses at Kinloch Golf Club. Count Nine, January 7th, 2012, $1,424 in green fees, caddie fees, merchandise, and dining expenses as Kinloch Golf Club. March — Count Ten, March 6, 2012, $50,000 check from Starwood Trust. Count Eleven, May 22nd, 2012, a $20,000 wire transfer from Starwood Trust. All in violation of Title 18, U.S. Code, Section 1951 and Section 2.

The statute Title 18, U.S. Code, Section 9151(a) provides in pertinent part whoever, in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by extortion or attempts so to do is guilty of an offense against the United States.

Title 18, U.S. Code, Section 1951(b)(2) provides in pertinent part the term "extortion" means the

obtaining of property from another, with his consent, under color of official right.

In addition, Title 18, U.S. Code, Section 1951(b)(3) provides in pertinent part the term "commerce" means all commerce between any point in any state, territory, possession, or the District of Columbia and any point outside thereof; all commerce between points within the same state through any place outside such state; and all other commerce over which the United States has jurisdiction.

The elements of the offense of obtaining property under color of official right are as follows. To prove the crime of obtaining property under color of official right against defendant Robert F McDonnell as charged in Counts Six through Eleven, the government must prove each of the following elements beyond a reasonable doubt. First: That the defendant was a public official. Second: That the defendant obtained a thing of value not due him or his office. Third: The defendant did so knowing that the thing of value was given in return for official action. And fourth: That in so acting, the defendant did or attempted in any way or degree to delay, obstruct, or affect interstate commerce, or an item moving in interstate commerce.

The second element, that defendant Robert McDonnell obtained a thing of value not due him or his office, means that defendant Robert McDonnell obtained a thing of value that was not legitimately owed to the office the defendant represented. The government does not have to prove that the thing of value given was of personal benefit to the defendant Robert McDonnell. Nor does the government have to

prove that the thing of value was given to defendant Robert McDonnell directly; if the defendant knows that the thing of value was given in return for Robert McDonnell's official actions, it does not matter that they were given to a third party.

The government does have to prove beyond a reasonable doubt that the thing of value obtained was not due or owing the office which defendant Robert McDonnell represented.

To satisfy the third element, the government must prove beyond a reasonable doubt that defendant Robert McDonnell obtained a thing of value to which he was not entitled, knowing that the thing of value was given in return for official action. Defendant Robert McDonnell need not have affirmatively induced the provision of the thing of value by his actions, but he must have known that the thing of value was given in exchange for official action. You do not have to determine whether defendant Robert McDonnell could or did actually perform the official action in return for which the thing of value was given, or whether he actually had a duty to do so.

As was the case with bribery, the exchange, or quid pro quo, need not be stated in expressed terms, and the intent to exchange can be inferred from all the surrounding circumstances.

Furthermore, as also was the case with bribery, given — a given thing of value need not be correlated with a specific official action, and a thing or things of value may be given with the intent to retain a public official's services on an as-needed basis, so that as opportunities arise the public official would take specific official action on the payor's behalf. As also

was the case with bribery, the government need not prove that the thing of value caused defendant Robert McDonnell to change his position. If defendant Robert McDonnell obtained a thing of value to which he was not entitled, knowing the thing of value was given in return for official actions, it is not a defense that he would have lawfully performed the official action anyway, regardless of the thing of value.

Finally, the instructions I gave with respect to the definition of "official action" for the purposes of honest services fraud charges apply equally to the definition of official action for the purposes of Counts Five through Eleven.

To find the interstate commerce element satisfied, it is not necessary to find that a defendant actually intended to obstruct, delay, or affect commerce. Rather, the government need not only prove that the defendant you are considering deliberately performed or attempted to perform an act, the ordinary and natural consequences of which would be to obstruct, delay, or affect commerce. The effect on interstate commerce need only be slight, and it need not be adverse. Proof that the extortion under color of official right would have affected interstate commerce, even if minimally and even if positively, is sufficient. However, if you determine that there has been no effect on interstate commerce, or that there could not have been any effect on interstate commerce, then you cannot find the defendant guilty.

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA, v. ROBERT F. MCDONNELL, and MAUREEN G. MCDONNELL, Defendants.	Action No. 3:14-CR-12

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendant Robert F. McDonnell's Motion #39–Renewed Motion for Judgment of Acquittal Pursuant to Rule 29 of the Federal Rules of Criminal Procedure ("Motion") (ECF No. 509). The Government filed an Opposition Memorandum ("Opp'n Mem.") (ECF No. 532) on October 14, 2014. McDonnell subsequently filed a reply on October 24, 2014 ("Reply Mem.") (ECF No. 540). The parties have not requested a hearing on this matter, and the Court finds that oral argument is unnecessary. E.D. Va. Loc. Crim. R. 47(J). For the reasons set forth below, the Motion is hereby DENIED.

I. BACKGROUND

Defendant Robert F. McDonnell ("McDonnell") served as the 71st Governor of the Commonwealth of

Virginia from January 2010 to January 2014. His wife, Maureen G. McDonnell ("Mrs. McDonnell"), served as the First Lady of Virginia.

During his campaign for Governor, McDonnell met Jonnie Williams ("Williams"). Williams was the Chief Executive Officer of Star Scientific, Inc. ("Star Scientific"). Beginning in or about 2007, Star Scientific focused on utilizing certain alkaloids in the tobacco plant, namely anatabine, to address issues related to the desire to smoke. The company engaged in the development, manufacture, and marketing of two anatabine-based dietary supplements: CigRx and Anatabloc. To gain customer and physician approval of its products, Star Scientific sought scientific studies of anatabine.

On January 21, 2014, McDonnell, along with his wife, was charged in a 14-count indictment, with Counts 1 11 alleging that he committed and conspired to commit honest-services wire fraud and extortion under color of official right. Specifically, the indictment alleged that "the defendants participated in a scheme to use ROBERT MCDONNELL's official position as the Governor of Virginia to enrich the defendants and their family members by soliciting and obtaining payments, loans, gifts, and other things of value from [Williams] in exchange for ROBERT MCDONNELL performing official actions on an as-needed basis, as opportunities arose, to legitimize, promote, and obtain research studies for Star Scientific's products, including Anatabloc." Indictment ¶ 22. On September 4, 2014, a jury convicted McDonnell on Counts 1 11. On September 18, 2014, McDonnell filed the instant Motion, asking for a judgment of

acquittal on those eleven Counts. Specifically, McDonnell contends that the Government has failed to prove that he performed or promised to perform any "official act" for Williams, and also failed to establish federal jurisdiction for Counts 5-11.

II. LEGAL STANDARD

"A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later." Fed. R. Crim. P 29(c)(1). If the jury returned a guilty verdict, the court can "set aside the verdict and enter an acquittal." Fed. R. Crim. P 29(c)(2).

The test for determining if a court should grant a Rule 29(c) motion is "whether there is substantial evidence (direct or circumstantial) which, taken in the light most favorable to the prosecution, would warrant a jury finding that the defendant was guilty beyond a reasonable doubt." *United States v. MacCloskey*, 682 F.2d 468, 473 (4th Cir. 1982). Substantial evidence is defined as "evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *United States v. Burgos*, 94 F.3d 849, 862 (4th Cir. 1996). If "any rational trier of fact could have found the elements of the offense beyond a reasonable doubt," the jury's verdict must stand. *United States v. United Med. & Surgical Supply Corp.*, 989 F.2d 1390, 1402 (4th Cir. 1993).

III. DISCUSSION

A. Claim 1: McDonnell Did Not Perform or Promise to Perform Any Specific "Official Acts" to Benefit Williams

(1) Failure to Prove "Official Act"

The critical issue that predominates in this case is what constitutes an "official act" under the federal anticorruption laws. At its most basic definition, an "'official act' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity, or in such official's place of trust or profit." 18 U.S.C. § 201(a)(3). More specifically, official action is conduct that is taken "as part of a public official's position"—whether pursuant to an explicit duty or as a matter of "clearly established settled practice." *See United States v. Jefferson*, 674 F.3d 332, 353 (4th Cir. 2012).

Clearly the bribery statute does not encompass every action taken in one's official capacity, *see id.* at 356, or else absurd outcomes would assuredly result. But, on the other hand, "[e]very action that is within the range of official duty comes within the purview of [this statute]." *United States v. Birdsall*, 233 U.S. 223, 230 (1914). Thus, to distinguish between the apparent fine line of routine official duties and public corruption, the Court must look to whether a quid pro quo agreement existed.

A quid pro quo agreement evinces a sort of "I'll scratch your back if you scratch mine" arrangement. *United States v. Jennings*, 160 F.3d 1006, 1014 (4th Cir. 1998). In other words, "[b]ribery requires the

intent to effect an exchange of money (or gifts) for specific action (or inaction), but each payment need not be correlated with a specific official act." *Id.* "The quid pro quo requirement is satisfied so long as the evidence shows a course of conduct of favors and gifts flowing to a public official *in exchange for* a pattern of official actions favorable to the donor.' Thus, all that must be shown is that payments were made with the intent of securing a specific *type* of official action or favor in return." *Id.* (citation and internal quotation marks omitted).

McDonnell first contends that no evidence was introduced to prove that he ever promised to perform any specific official act for the benefit of Williams or his company. McDonnell contends that at worst he provided a vague promise to Williams to help Williams obtain studies for Star Scientific, which he argues fails to establish federal corruption. *See id.* at 1022. However, both of McDonnell's initial contentions especially when viewed in light most favorable to the Government fail to persuade this Court.

A quid pro quo agreement need not be expressly stated "for otherwise the law's effect could be frustrated by knowing winks and nods." *Evans v. United States*, 504 U.S. 255, 274 (1992) (Kennedy, J., concurring). Rather, "[t]he inducement from the official is criminal if it is express or if it is implied from his words and actions, so long as he intends it to be so and the payor so interprets it." *Id.* Thus, the Government was entitled to establish an implicit agreement through circumstantial evidence, which it did by using permissible temporal and contextual inferences. Moreover, quite unlike McDonnell's

argument that at worst he only provided only a vague promise to Williams, substantial evidence supports the jury's finding that McDonnell actually performed official acts in exchange for gifts and loans from Williams.

Naturally, then, the Court must analyze the alleged five "official acts" presented by the Government to determine whether they were in fact "official." The five alleged "official acts" include: (1) the August 1, 2011 meeting between Williams and Molly Huffstetler, an official from the Health and Human Resources Department; (2) the August 30, 2011 Mansion event; (3) the February 17, 2012 email to Jason Eige; (4) the February 29, 2012 Healthcare Leaders Reception; and (5) McDonnell's March 21, 2012 meeting with Lisa-Hicks Thomas and Sarah Wilson. *See* Tr. Vol. XXV 5869:16–5870:1; 6039:25–6042:14. McDonnell argues that none of these identified actions purported to exercise, or influence the exercise of, any of the regulatory powers of the state. In other words, McDonnell argues that because he never asked or directed University of Virginia ("UVA") or Virginia Commonwealth University ("VCU") officials to conduct research on anatabine he did not take any "official action." Rather, McDonnell argues that at worst he only provided mere access to Williams. Thus, in his reply brief, McDonnell asserts that if his conviction is left standing, it "will be the only one in which a public official has ever been found guilty of bribery not for promising to himself influence the exercise of governmental power, but for merely facilitating access so that a third party could attempt to do so." (Reply Mem. at 1.)

Admittedly, mere "[i]ngratiation and access" may not alone create a quid pro quo agreement within the meaning of the bribery statutes. *See Citizens United*, 558 U.S. at 360. As Judge Merritt recently observed,

> Subjective intent is the keystone of bribery. The influence of money in politics is growing by leaps and bounds, and the subjective intent of the public official receiving the money is perhaps the last and only distinguishable feature between criminal "*quid pro quo* bribery" and permissible "ingratiation." The exchange of money for a vote is a crime that threatens the foundation of democracy. *Buckley v. Valeo*, 424 U.S. 1, 26–27, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). The exchange of money for "ingratiation and access is not corruption" at all; indeed, the exchange is so essential to the foundation of democracy that it is protected by the First Amendment. *McCutcheon v. FEC*, -- U.S. --, 134 S.Ct. 1434, 1441,188 L.Ed.2d 478 (2014) (internal edits omitted). We are left to distinguish the two as best we can by looking into the subjective intent of the public official. And by we, I mean the jury.

United States v. Dimora, 750 F.3d 619, 632 (6th Cir. 2014) (Merritt, J., dissenting). Thus, to distinguish between mere access and federal corruption, the Court must analyze McDonnell's subjective intent in receiving the money.

The Government provided substantial evidence for the jury to conclude that McDonnell knew what Williams was seeking, specifically, research studies for Star Scientific's Anatabloc product. Through

Williams' direct examination, the Government elicited testimony that in October of 2010, McDonnell flew back from California to Virginia on Williams' private jet. Tr. Vol. III 658:18–20. On that flight Williams explained to McDonnell that he "needed testing and [he] wanted to have this done in Virginia." *Id.* at 660:7–8. Williams testified that he asked McDonnell if McDonnell "[w]ould connect [him] with the person in Virginia in [McDonnell's] administration so that [he could] move this forward." *Id.* at 660:9–11. Moreover, and most tellingly, in June 2011, Williams sent a letter to McDonnell that specifically described the context within which Williams sought official action from McDonnell. Tr. Vol. IV 701–705; Gov't Ex. 162. And McDonnell admitted on cross-examination that he received the letter, Tr. Vol. XXI 5036:10, and at least read the portion of the letter suggesting that McDonnell initiate a "Virginia study" of Anatabloc at UVA and the Medical College of Virginia ("MCV"), *id.* at 5037:3–11. Thus, based on the evidence presented, the jury could have properly determined that in accepting Williams' gifts and loans, McDonnell understood the implicit quid pro quo.

Secondly, McDonnell's argument is misguided as he assuredly did more for Williams than merely provide "access." The Government adduced substantial evidence of the "quo," that is the "official action," in this case. As stated above, "'official act' means any decision or action on any question, matter, cause, suit, proceeding or controversy, which may at any time be pending, or which may by law be brought before any public official, in such official's official capacity " 18 U.S.C. § 201(a)(3). The

alleged official actions in this case were within the range of actions on questions, matters, or causes pending before McDonnell as Governor as multiple witnesses testified that Virginia business and economic development was a top priority in McDonnell's administration. Tr. Vol. IX 2037:17–23; 2234:22–25. His campaign slogan was "Bob's for Jobs." *Id.* at 2232:17–19. And several former McDonnell staffers testified about the various ways McDonnell would customarily take action on questions, matters and causes of Virginia business and economic development, including hosting events and having meetings. *See id.* at 2235:14–16; Tr. Vol. XI 2545:14–16.

Yet, McDonnell argues that because he never asked or directed any official to give Williams the governmental action he desired he did not perform any official action. However, the Court need not look any further than the March 21, 2012 meeting between McDonnell, Lisa Hicks-Thomas ("Hicks-Thomas"), McDonnell's Secretary of Administration, and Sarah Wilson ("Wilson"), the Virginia Department of Human Resource Management Director, to discredit McDonnell's argument. During that meeting McDonnell pulled out a bottle of Anatabloc and said that he had been taking the pills and "they were working well for him, and [] he thought it would be good for [] state employees." Tr. Vol. XI 2676:15-19. Hicks-Thomas testified that *McDonnell then asked if she and Wilson would "meet with the people."* *Id.* at 2676:19–20 (emphasis added). After the meeting, both women then went down to Hicks-Thomas' office and looked up Anatabloc on the computer. *Id.* at 2677:1–5. Or, for another example,

the email to Jason Eige ("Eige"), the Governor's counsel and policy advisor, in which McDonnell said, "Please see me about Anatabloc issues at VCU and UVA." Tr. Vol. VII 1666:9–10. Eige subsequently responded, "Will do. We need to be careful with this issue." *Id.* at 1666:12.

In each of the aforementioned examples, McDonnell attempted to use his gubernatorial office to influence governmental decisions, (*see* Reply Mem. at 14), specifically attempting to obtain research studies for Star Scientific. McDonnell clearly had influential power over Hicks-Thomas, for example, as she testified that she reported to the Governor and he had the power to fire her. Tr. Vol. XI 2673:14–15, 19–20. *See United States v. Carson*, 464 F.2d 424, 433 (2d Cir. 1972) ("There is no doubt that federal bribery statutes have been construed to cover any situation in which the advice or recommendation of a Government employee would be influential "). McDonnell's argument that he never followed back up with these individuals or pressured them any further is essentially irrelevant as such standard is not defined in any supporting case law.

Furthermore, McDonnell fails to account for the fact that "official action can include actions taken in furtherance of longer-term goals, and an official action is no less official because it is one in a series of steps to exercise influence or achieve an end." Tr. Vol. XXVI 6103:10–14. Thus, it is unnecessary "to link every dollar paid to [McDonnell] to a specific meeting, letter, trip, or other action by [McDonnell] to fulfill his end of a corrupt bargain." *Jefferson*, 674 F.3d at 359. Rather, it is enough that the "[Williams] intended for each payment to induce [McDonnell] to

adopt a specific *course of action*." *Id.* (quoting *United States v. Quinn*, 359 F.3d 666, 673 (4th Cir. 2004)) (internal quotations omitted) (emphasis added). Therefore, just because there is no evidence that McDonnell directly asked UVA or VCU researchers to conduct studies of Anatabloc does not discount the fact that McDonnell took official actions in pursuit of achieving that ultimate goal.

In its charge to the jury, the Court defined bribery as "the exchange of a thing or things of value for official action by a public official. In other words, a quid pro quo." Tr. Vol. XXVI 6100:9–11. Substantial evidence supports the jury's finding of a quid and fairly specific, related quo. *See Jennings*, 160 F.3d at 1019. McDonnell did more than just provide access to Williams; he directed his employees to take action on research studies for Anatabloc. And he did so corruptly.

(2) Unconstitutionally Vague Statutes & Legal Conduct Pursuant to State Law

McDonnell next argues that the honest services fraud statute and Hobbs Act are unconstitutionally vague. He further alleges that extending the federal criminal law into state self-governance violates the Tenth Amendment and the principles of federalism.

As an initial matter, McDonnell's arguments are not an appropriate basis for an evidentiary sufficiency challenge under Rule 29. Fed. R. Crim. P 29(a) ("[T]he court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction."). However, regardless, both arguments are without merit.

McDonnell's assertion that the charging statutes are unconstitutionally vague fails. The void-for-vagueness doctrine addresses concerns about (1) fair notice and (2) arbitrary and discriminatory prosecutions. *Skilling v. United States*, 561 U.S. 358, 412 (2010). The Supreme Court has held unequivocally that "[i]nterpreted to encompass only bribery and kickback schemes, § 1346 is not unconstitutionally vague." *Id.* The Court reached this conclusion by observing that bribery has long constituted honest services fraud and has been defined and prohibited under related federal statutes. *Id.* at 412–13. Moreover, the honest services fraud statute requires proof that Defendants acted with a criminal state of mind, which "further blunts any notice concern." *Id.* at 412.

Secondly, McDonnell's invocation of the principles of federalism is equally unpersuasive, particularly because Virginia law does not necessarily "decriminalize" the conduct for which McDonnell was convicted. Virginia Code section 2.2-3103 prohibits any officer or employee of a state or local government from "solicit[ing] or accept[ing] money or other thing of value for services performed within the scope of his official duties." Va. Code § 2.2-3103(1); *see also id.* § 2.2-3103(8) (prohibiting the acceptance of gifts "from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor"). McDonnell's conduct thus falls

within the province of these Virginia statutes and therefore the present argument is unavailing.

B. Claim 2: The Government Failed to Establish the Jurisdictional Basis for Hobbs Act Extortion

The Hobbs Act requires that a defendant's extortion "obstruct[ ], delay[ ], or affect[ ] commerce or the movement of any article or commodity in commerce." 18 U.S.C. § 1951(a). In order to satisfy this jurisdictional element, the prosecution bears the burden of proving a "reasonably probable effect on commerce, however, minimal, as a result of the extortion." *United States v. Spagnolo*, 546 F.2d 1117, 1119 (4th Cir. 1976). In other words, "'the connection with or effect on interstate commerce must have been at least a realistic probability at the time of the extortion.'" *United States v. Buffey*, 899 F.2d 1402, 1404 (4th Cir. 1990) (quoting *United States v. Elders*, 569 F.2d 1020, 1023–24 (7th Cir. 1978)). Thus, the Fourth Circuit has held that no particular commercial movements need actually be affected. *United States v. Brantley*, 777 F.2d 159, 162 (4th Cir. 1985). Instead, it is sufficient if commerce would have been affected had the extortionate project been carried through to the contemplated conclusion. *Id.* The Court's jury instructions mirrored this precedent:

> To find the interstate commerce element satisfied, it is not necessary to find that a defendant actually intended to obstruct, delay, or affect commerce. Rather, the government need not [sic] only prove that the defendant you are considering deliberately performed or

> attempted to perform an act, the ordinary and natural consequences of which would be to obstruct, delay, or affect commerce. The effect on interstate commerce need only be slight, and it need not be adverse.

Tr. Vol. XXVI 6114:15–23.

In the present case, McDonnell argues that the Government failed to prove the requisite federal jurisdiction. He argues that there is no evidence that the alleged bribery scheme had an actual or realistically probable effect on interstate commerce. Rather than meet its burden of proof, McDonnell argues that the Government simply left it to the jury to infer a "reasonable probability" of an effect on interstate commerce. However, contrary to McDonnell's position, the Court finds that the Government presented evidence that had it been successful, the bribery scheme would have affected interstate commerce.

The Government introduced evidence that Star Scientific marketed and distributed CigRx and Anatabloc *nationwide*. Tr. Vol. X 2341:15–18. Testimony was also elicited that Star Scientific had a scientific office in Gloucester, Massachusetts, an executive and regulatory and legal office in Washington, D.C., and a manufacturing facility in New Jersey. *Id.* at 2341:25–2342:15. In its closing argument, the Government stated, "[O]bviously, had the scheme actually worked out a little better than it did for Star, then the effects on their business would have been positive and would have affected interstate commerce." Tr. Vol. XXV 5891:16–19. Viewing the evidence in light most favorable to the Government,

the Court finds that the Government has fulfilled its burden. A reasonable finder of fact could accept the aforementioned evidence as adequate and sufficient in establishing a realistic probability of an effect on interstate commerce.

IV. CONCLUSION

For the foregoing reasons, McDonnell's Motion is DENIED.

Let the Clerk send a copy of this Memorandum Opinion to all counsel of record.

An appropriate Order will issue.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 1st day of December 2014.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA, v. ROBERT F. MCDONNELL, and MAUREEN G. MCDONNELL, Defendants.	Action No. 3:14-CR-12

ORDER

THIS MATTER is before the Court on two Motions to Dismiss Counts 1 11 of the Indictment ("Motions to Dismiss") (ECF Nos. 105, 111) and two Motions for Discovery of Selected Grand Jury Communications ("Grand Jury Motions") (ECF Nos. 8, 25) filed by Defendants Robert McDonnell and Maureen McDonnell.

The Indictment sufficiently alleges each element of the charged offenses, fairly apprising Defendants of the charges against which they must defend and allowing Defendants to plead double jeopardy in the event of a future prosecution for the same offenses. *See Hamling v. United States*, 418 U.S. 87, 117 (1974); *United States v. Kingrea*, 573 F.3d 186, 191 (4th Cir. 2009) (quoting *United States v. Darby*, 37 F.3d 1059, 1062 (4th Cir. 1994)). It is well settled that the validity of an indictment is tested by its allegations, not by whether the government can prove its case. *See Costello v. United States*, 350 U.S. 359, 363 (1956). Defendants take issue with the

Indictment primarily on the ground that it fails to allege Robert McDonnell performed or promised to perform any "official act" within the meaning of the federal bribery statutes. However, the Fourth Circuit has held that conduct analogous to that alleged in paragraphs 22 and 111(c) of the Indictment can, as a matter of law, "fall under the umbrella of [ ] 'official acts.'" *United States v. Jefferson*, 674 F.3d 332, 358 (4th Cir. 2012) (enumerating among the defendant's official acts, "[a]ttempting to facilitate and promote ventures between foreign governments and the businesses who were paying"), *cert. denied*, 133 S. Ct. 648. Whether Defendants' conduct in fact constituted "the corruption of official positions through misuse of influence in governmental decision-making" is a question for the jury based on the evidence adduced at trial. *United States v. Carson*, 464 F.2d 424, 434 (2d Cir. 1972). Accordingly, the Motions to Dismiss are DENIED.

Federal Rule of Criminal Procedure 6(e) provides that a court may authorize disclosure of a grand-jury matter "at the request of a defendant who shows that a ground may exist to dismiss the indictment because of a matter that occurred before the grand jury." Fed. R. Crim. P 6(e)(3)(E)(ii). Having determined that the Indictment is facially valid and alleges conduct that may be found by a jury to constitute "official action" within the meaning of federal bribery statutes, no "particularized need" for the requested materials exists. *Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211, 222 (1979). Review of facially valid indictments either for insufficient evidentiary support or for the sufficiency of the prosecutor's presentation "would run counter to the whole history of the grand jury

institution." *United States v. Williams*, 504 U.S. 36, 54-55 (1992) (quoting *Costello*, 350 U.S. at 364). Accordingly, the Grand Jury Motions are DENIED.

Let the Clerk send a copy of this Order to all counsel of record.

It is SO ORDERED.

/s/
James R. Spencer
Senior U. S. District Judge

ENTERED this 20th day of May 2014.